1948. **File No.** O. Tenancy/148 Pt. I.

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay Tenancy Act, 1939.

(for subsequent pps. pl. see part II).

P= 1414

E

File No. O. Tenancy/48 – Part I.

Std. Sectt. Slip 24 B a.

65-A

CONTENTS.

Legal Department File No. C. Tenancy / 48 Pt. IX

No.	.I*/ C. No.	Subject	pages.
1.	CN. 267 9-1-48	Bombay Tenancy Act, 1939 Sec. 24 - Civil Procedure Code, 1908 Sec. 85 Representation by the Diwan on behalf of the Raja of Sangli	1
2.	CN. 256 28-1-48	Sec. 4 (1) and 3 A(1) pplication to Government whether applicant is a protected tenant.	5 - 7
3.	CN. M 1220 5-2-48	Sec. 27 (2)(m) - Levy of process fees under	9.
4.	CN. 648 19-1-48	Sec. 16(1) Remission of Land Revenue payable to the Landlords.	11 -1
5.	RI. 1902 10-2-48	Independence day remission	13.
6.	RI. 3295 17-3-48 R.D. Cir No. 7249/45 dt. 10-3-48	Bombay Tenancy Act Criminal proceeding in respect o rights under the	
7.	CN. 1966 17-2-48	Sec. 28 Bombay Revenue Code 1879 Sec. 211 Remanding case for rehearing	19
8.	R.D. Cir No. 5328/45 dt. 10-4-48	Sec. 20 - Administration of	21-23
9.	CN 3370 8-4-48	Sec. 12(3) To whom will an appeal lie under the above sec.	25-26
10.	CN. 3159 1-4-48	Sec. 12(3), 28 Whether irregular order passed by Mamlatdar under the sec. 12 and where no appeal is made can be set aside by Govt.	27
11.	R.D. Cir. No. 7823/45 dt. 13-4-48.	Sec. 12 - Working of	19-31.
12.	R.D. Cir. No. 5935/45 dt. 12-4-48	Payment of compensation in respect of derequisitioned land	33

	R.I./ O.No.	Subject	pages
13.	ON 3259 5-4-48	Sec. 5(2)(d) Forming of co-operative Farming Society - whether there is any Legal objection of ~~Mamlatdar~~ to such -	35
14.	ON. 3035 29-3-48	Sec. 12(3) - Fixation of rent revision against the decision of Mamlatdar	37 -38
15.	ON. 1924 26-2-48	Sec. 20 - Interpretation of term "court"	39 - 40
16	ON. 3715 16-4-48	Sec. 25(1) - Whether sub-lessees of lands held on lease from the Crown are entitled to the benefits provided by the Act.	41 - 42
17	ON. 3084 30-3-48	Sec. 20 - ~~Exp~~ Non-payment of rent - whether ejectment ~~rent~~ suit can be filed against the applicant	43 -44
18.	ON. 4141 29-4-48	Sec. 5(2) - 7 Whether alienation of ~~original~~ assigned watan lands would create any tenancy right.	45 -
19.	ON. 1947 27-2-48	Sec. 25 (1) - whether lands held on lease from Crown are exempt from the provisions of the Act	47.
20	ON. 3087 30-3-48	Sec. 5(2) - & 24(1A) - Sec. 28 Termination of tenancy and taking possession	49-50.
21.	ON. 3613 14-4-48	Sec. ~~k~~ 12(3) Fixation of rent filing of an appeal from the decision of the Mamlatdar	51 52
22.	ON. 3679 15-4-48.	Bombay Tenancy Rules - Rule 5 - Bombay Increase of Court-Fees Act, 1943 - Whether this Act has any application to the fees prescribed in the B.T. Rules	53 - 55
23.	R.D. Cir. 5318/45 dt. 29-4-48.	Sec. 20 - Administration of	57 - 59

CONTENTS.

Legal Department File No. C. Tenancy / 48 Pt. I

No.	R.I. / O. No.	Subject	pages.
24.	ON. 4333 5-5-48	Sec. 25 (1) Lands held on lease from land mortgage Bank - whether they are exempt from the provisions of the Act.	61 -
25.	ON. 4408 7-5-48	Sections 20, 23 & 24(1) - Whether a tenancy Aval arkun can grant post-facto sanction to a landlord's possession under the —	63 - 64
	ON. 4601 13-5-48	Sec. 4(1)(a)(b) & Sec. 9 whether sec 9 applies to a case where the tenant who is qualified to be protected tenant, dies after eviction	65.
27.	ON 4613 13-5-48	Sec. 4 (1) - Whether explanation I under sec 3 applied for computing 6 yrs. period under the above sec.	67 - 68
28.	ON. 3564 13-4-48	Sec. 2 (a) - Interpretation of -	69 -
29.	ON. 4637 14-5-48.	Sec. 24 (1)(b) - Scope of the	71 -
30.	ON. 4595 12-5-48.	Sec. 24 (1) - whether the provisions of the Section do not oust the jurisdiction of a Civil or Revenue Court .	73-76
31.	ON. 4946 24-5-48.	sec. 24 (1) - Application to Revenue for restoration of lands	77 - 79
32.	ON. 5131 31-5-48	Whether the Act affords any protection to vendor	81 -
33.	ON. 4418 7-5-48.	Sec. 20 - Appeal to Govt. - Setting aside the order of a Grant Officer on appeal	83.

S. 4 Copies 22/5

No.	R.I.T.O.No.	Subject	page
34.	ON. 4646 14-5-48.	Sec. 28 - 5(2)(b), 20 & 24 (1-A) Termination of tenancy consequent upon failure to pay rent.	85-87
35.	On. 4702 17-5-48.	Sec. 28 - Whether a case can be remanded to the T.A. Karkun for re-hearing	89.
36.	ON. 4425 7-5-48	Sec. 20 & 24 (1A) Appeal to Govt. - for setting aside the order of P.O.	91
37.	On. 4610 13-5-48.	Sec. 24 (1A) & sec. 20 - Whether Mahlakari can terminate tenancy fornon-payment of rent and grant possession	93-94
38.	ON. 4978 25-5-48	Sec. 25 - Whether the provisions of the Act applying to lands held on lease by the Factory.	95-97
39.	ON. 5817 22-6-48.	Sec. 3 Exp. II & sec 4 - Interpretation of - protected tenant	99.
40.	ON. 6499 10-7-48.	Sec. 22(2)(3) Offence under the Taking cognizance of	103 -
41.	ON. 4609 13-5-48.	Sec. 20 & 24 (1A) Recovery of possession of lands for non-payment of rent	105-10
42.	ON. 5969. 25-6-48.	Sec. 23 - whether a stranger can ledge a complaint -	107
43.	ON. 6350 7-7-48.	Sec. 14 & 15 - Whether the Patdi Darbar can recover irrigation charge in addition to	109-110
44.	ON. 6455 9-7-48.	Sec. 24 (1A) Effect of civil court awarding possession to the tenant.	111
45.	On. 6463 9-7-48.	Sec. 5 (2) Restoration of land to the tenant against the decision of A.Karkun	115-11

CONTENTS.

Legal Department File No. O. Tenancy / 48 Pt I

r. No.	R.I. /O.No.	Subject	pages.
46.	ON. 6971 26-7-48.	Sec. 3A & Sec 26 - Entry in Record of Rights as protected tenant when the tenants claim to be permanent tenants .	117-121.
47.	ON. 7118 29-7-48.	Sec. 15 (1) - Fixation of maximum rent whether it is legally feasible	123 -
48.	ON. 7163 30-7-48.	Watan lands - application of general principle of law	125 -
49.	On. 7313 4-8-48.	Sec. 4(1)(b) Rights to restoration of rt tenancy	127 - 130
50.	ON. 7562 11-8-48.	Sec. 15(1) - Determination of an irrigated land - distinguishing from	131 -
51.	R.J. Cir. No. 9618/45 dt. 4-8-48.	Working of Secs 12 & 14A of	133 -
52.	ON. 6639. 15-7-48.	Sec. 5(2), 23(1A), 28 - termination of tenancy for subletting allowed by the lease - order for evicting the tenant	135 - 139.
53	RI. 8726A 13-7-48.	Letter from Mr. V.T. Gambhirwalla addressed to (OL) re-revision of order passed by the	141 - 143.
54.	ON. 8060 24-8-48.	Application for becoming protected tenant Time limit for the interpretation of	145 - 146
55.	ON. 8545 9-9-48	Sec. 12 (6) Whether applications made under the various sections of the Act which are dismissed on account of non-attendance of the parties after due service of notice can be restored	147 - 149

r. No.	R.1./O.No.	Subject	pages
56.	ON. 7272 2-8-48.	Sec. 24 (1A) - whether the Mamlatdar has any jurisdiction to decide the rights between the parties	151 -15

S.C.

5 Copies 22/5

Office of the R.L.A.

Representation by the Dewan on behalf of the Raja of Sangli.

Civil Procedure Code, 1908 and Bombay Tenancy Act 1939.

It is true that the lands in dispute stand in the name of the Chintamanrao Appasaheb Patwardhan Sanglikar and are Saranjam Inam of class I; but it appears that the Dewan of Sangli has been appointed under section 85 of the Civil Procedure Code to prosecute or defend any suit for the Raja of Sangli and although the empowerment strictly relates to suits under the Civil Procedure Code, and does not extend to the representation of the Raja of Sangli in proceeding under section 24 of the Bombay Tenancy Act, it appears that no serious objection should be taken to the representation of the Raja of Sangli by his Dewan in proceeding under section 24 of the Bombay Tenancy Act.

Sd/ [illegible] L.
8-1
Remembrancer of Legal Affairs.

G.R. to R.D. No. 267, dated the 9th January 1948.

S.C.
4 Copies 17-5-

Submitted

2. This is regarding an appeal to the Provincial against the order of the Collector, Broach in appeal dated 28-4-1947 under section 28 of the Bombay Tenancy Act, 1939. The facts of the case are as follows :-

The appellant Mr. Khushabhai Ranchhodbhai of Nikora in the Broach taluka had on 25-5-1945 taken on lease for the year 1945 agricultural land admeasuring 2 acres and 35 gunthas out of S.No.455 of Nikora from respondents 2 to 5 who in turn had taken it on lease from Sardar Davar Pehmenas Kavasji Mode in whose name it stands in Government records. Sardar Davar leased the land on 7-5-1946 to some other person viz. Punjia Umla and Devla Punjia. Thereupon the appellant made an application to the Mamlatdar, Broach forpossession of the lands under the Bombay Tenancy Act. The Mamlatdar rejected the application as Mr. Khushalbhai had not given notice under section 4(2) of the Act to the landlord to the effect that he was willing to hold the land on the same terms etc. Against this order Mr. Khushalbhai appealed to the Collector of Broach on the grounds :

(1) that the lower Court has erred in holding that the appellant was required to give a notice to the landlord under section 4(2) of the Bombay Tenancy Act,

(2) that the appellant was entitled to remain possession of the land in question for ten years as has tenancy subsisted on 11-4-46.

The Collector rejected appeal and held that

(a) the appellant is not a protected tenant and his case is not covered by section 4(2) and therefore the Mamlatdar'S ORDER WAS NOT proper; and

(b) the appellant's contention that section 23(1) (a) applies to his case and therefore thewords "on the said date" in section 23(b) refer to the date referred to in section 23(a) i.e. the date of the coming into force of the Act i.e. 8-11-45.

Being aggrieved by this order Mr. Khushalbhai has appealed to the Provincial Government. The P.L.A.

is requested to advise.

3. Sections 3, 3A and 4(1) of the Bombay Tenancy Act, 1939 lay down as to who are protected tenants and who are deemed to be protected tenants. Section 3 lays down that a tenant shall be a protected tenant in respect of any land if-

he has held such land continuously for a period of not less than six years immediately preceding either the 1st day of January 1938 or (ii) the first day of January 1945 and he has cultivated such land personally.

4. Under section 4(1) every tenant shall be deemed to be a protected tenant for the purposes of this act, if he held the land and cultivated personally continuously for a period of not less than six years immediately preceding either either the 1st day of April 1937 or the 1st day of April 1944 and was evicted from such land otherwise than by an order of a competent Court.

5. Section 3A (1) provides that every tenant shall on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946 (i.e. 8-11-1947) be deemed to be a protected tenant for the purposes of this Act and his rights shall be recorded in the Record of Rights unless his landlord applies to the Mamlatdar concerned for a declaration that he is not a protected tenant.

6. The appellant Khushalbhai had taken on sub-lease the land in question on 25-5-1945 for a period of one year (Please see proties marked "A" in the extracts of V.F.VII andVIII and XIII on p. 44 below). None of the above sections would help Mr. Khusha bhai to make him a protected tenant. His tenancy besides had expired before section 3 A of the Act (inserted by amending Act XXVI of 1946) came into operation (i.e. 8-11-47)

7. Section 23(1) prohibits leases less than 10 years after the amending Act of 1945 came into force i.e. 8-11-47 and makes all leases subsisting on that date or made there

after for a period of 10 years. But since Mr. Khushalbhai's lease was terminated on 7-5-46 he cannot claim that his lease be continued under this section.

8. The Collectors findings on appeal on both the points are correct; and the appeal to Government may be rana rejected

SD/
31-12
A.A.S.

The facts as stated in the appellate order of the Collector of Broach dated 28-4-1947, are re-capitulated in the above note. The main grounds of appeal are.-

(i) that the lower Court erred in holding that the appellant was required to give a notice to the landlord under section 4(2) of the Bombay Tenancy Act; and

(ii) that the appellant was entitled to retain possession of the land in question for ten years as his tenancy subsisted on 11-4-1946.

As regards the first issue, it may be pointed out that tenants are deemed to be protected tenants under various circumstances specified in sections 3, 3A and 4(1) of the Bombay Tenancy Act. Under s.3, a tenantshall be deemed to be a protected tenant of any land i.-

(a) he has held such land continuously for a period of not less than six years immediately preceding either-

(i) the first day of January 1938, or
(ii) the first day of January 1945; and

(b) he has cultivated such land personally during the aforesaid period.

As the facts reveal, on 25-5-1945 the tenants of Sardar Kodi had sub-let S.No. 455 to Mr. Khushalbhai for the year 1945-46. Mr. Khushalbhai was not, therefore, a tenant of Sardar Kodi within the meaning of S.3(14) of the Bombay Land Revenue Code. Even if he was deemed to be a tenant as he did not hold the land continuously for a period of six years immediately preceding 1st of January 1938 or 1st of January 1945, he could not be deemed to be a protected tenant within the meaning of section 3.

S.C. 17-5- Under sub-section (1) of section 3A, every tenat

shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within ~~the~~ whose jurisdiction the land is situated for a declaratin that the tenant is not a protected tenant. In exercise of powers conferred by sub-sections (2) of section 1 of the Act the provisions of sections 2 to 30 of the Act were extended to the Broach District by G.N.,R.D. No.1140-45(a),dated 11-4-1946. It is stated that on expiry of the term of the lease Sardar Dayar leased the said land to some other personson 7-5-1946 The Bom.Tenancy (Amendment) Act ~~xxx~~ 1946, came into force on 7-11-1946. It is therefore evident that Mr. Khushalbhai did not hold the land as tenant upto 7-11-1947, that is for a period of one year with effect from 7-11-46, and consequently he cannot be deemed to be a protected tenant withi the meaning of section 3A(1).

Under sub-section (1) of section 4, every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he held any land and cultivated it personally continuously for a period of not less than six years immediately preceding -

(i) the first day of April 1937, or
(ii) the first day of April 1944, and

was evicted from such land on or after such date otherwise than by order of acompetent Court on any of the grounds specified in the section 5(2). As Mr. Khushalbhai did not cultivate the land as tenant continuously for a period of six years immediately preceding 1-4-1937 or 1-4-1944, he cannot be deemed to be a protected tenant within the meaning of s.4(1) of the Act. That being the case the question of giving intimation in writing to the landlord that he is willing to hold the land as contemplated by sec. 4(2) did not survive. The conclusion of the Collr. of Broach on the first issue is, therefore, correct.

As regards the second issue, sec. 23 as it stood prior to its

amendment by act XXVI of 1946, provided that no lease of any land situated in any area in which this section comes into force, made after the coming x into force of this section in such areas shall be for a period less than 10 years and no such lease shall be determined before such period only on the ground that the period of the lease has expired, notwithstanding any agreement, usage or law to the contrary.

As stated above, the provisions of sects. 2 to 30 were extended to Broach District on 11-4-46, while the land in question was sub-let to Mr. Mushalbhai on 25-5-46. As it was not a lease of land made after 11-4-46, the provisions of old sec. 23 were not attracted. The present sec. 23 was substituted for the old sec. 23, by Bom. Tenancy (Amendment) Act, 1946, which came into force on 7-11-46. As the lease in question was neither made after 7-11-46 nor was it subsistin on 7-11-46, the matter would not fall within the scope of either cl.(a) or cl.(b) of sub-sec. (1) of sec. 23. Consequently, the decision of the Collr. of Broach that the contention of the appellant is not tenable, is correct. The view expressed in the R.D. office note agreeing with the Co 's interpretation of sec. 23 on the second point is correc If approved, the papers may be returned with the following remark ,-

"Seen and returned.
The decision of the Collr. of Broach is legally correct. The view taken by me, is correct.

SD
26/1

A.H.R. I agree Reply may be sent A

R.L.A. 27/1 - P.M.L 27/1 - RVK 27/1

Vor&P.D. No. 956 at 28-1-48.

C.C.
4 Copies 17-5-

Office of the R.T.P.

Levy of process fee under the Bombay Tenancy Act 1939. Section 27(2)(m)

(m)

Although process fees are levied for the service done by the party, it would not, in the absence of any specific provision in the Bombay Tenancy Act, 1939, be competent for Government to make any rule under clause (m) of section 27(2) providing for the levy of such fees. The Act will have to be amended if Government desires to levy process fees.

I.d/- P.M.L.

~~S~~ / 4-2

Superintendent of Legal Affairs.

U.O. to R.D. No. 1220 dated the 5th February 1948 RP.

4 Copies
17-5-

Office of the R.L.A.

Remission of Land Revenue.

Bombay Tenancy Act, 1939 and Bombay Land Revenue Code, 1879.

R.L.A.'s No 7322 dated 14-8-1940.

By G.R., R.D. No. 5547/45, dated the 8th August 1947, in celebration of the Indian Independence day on 15th August 1947, Government decided to remit 10 per cent of the land revenue demand so far as recoveries of the current year agricultural assessment was concerned and directed the Collectors to take steps under section 84A of Land Revenue Code and section 16 of the Bombay Tenancy Act to ensure that the full benefit of the special remission sanctioned above) is passed on by the superior holders to their tenants. As Inam Estates are not governed by Bombay Land Revenue Code, 1879, nor have they been paying any land revenue to Government. The question raised for the consideration of the R.L.A. is whether the orders contained in the aforesaid G.R. can be applied to the Mewasi Estates under sections 16 and 26 of the Bombay Tenancy Act.

Sub-section (1) of section 16 of the Bombay Tenancy Act, 1939, provides for suspension or remission of rent payable to the landlord whenever from any cause the payment of the whole land revenue is wholly or partially remitted or suspended. Sub-section (2) provides:

> "If no land revenue is payable to Government in respect of such land and if from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the neighbourhood of such land has been suspended or remitted, the Collector shall, subject to the general or special orders of Government in the manner provided in sub-section (1) suspend or remit, as the case may be, the payment to the landlord of the rent or part of it due in respect of such land."

Since no land revenue is payable by the Mewasi Estates sub-section (1) of section 16 will have no application.

It is only be unreasonably stretching the meaning of the expression "any other land in the neighbourhood of such land" so as to include therein the rest of the Bombay Province which is contiguous to the Mewasi Estate that it can be argued that the Collector can direct the suspension or remission subject to Government's orders. In my

S.C. 17/5

opinion, the expression cannot, in reason be so stretched; nor would that appear to be the intention. Sub-section (2) was apparently intended to apply to cases of lands which would ordinarily have paid land revenue but which by reason of their special tenure paid no land revenue to Government although they were situated in an area where all other lands paid land revenue. In respect of such lands, land revenue is generally, wholly or partially remitted by Government by virtue of their tenure ; and it was felt that there would be no inequity in admitting the tenants on such lands to the same benefits as the neighbouring tenants. The sub-section cannot however be extended to cover the entire section of the partially excluded areas which is not brought under the Land Revenue Code at all, on the specious ground of its neighbourhood to the rest of the Province. It would not, therefore, be legally feasible to the Collector to take action under sub-section (2) of section 16. Section 26 of the Act has no application. The opinion No. 7322 dated 14-8-1940, quoted by the Collector is not relevant. In the result the answer to the question propounded is in the negative.

P.M.Dad
17-1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 648 , dated the 19th January 1948.

S.C.
4 Copies 17-5-

(Below .ress Note, regarding : ission of land revenue i cele-
bra.le of Independence .ay.

NO. 5547-B/45.
.evenue Department.
Bombay 'astle, 16th February 1948.

Copies forwar ed to.-

The Commissioner of 'i.sions,
The Collectors,
The Colle .or of .mbay (Land Revenue epartment)
The sot lement .ommissioner and Director o .and Records,
The Government Pleader
The Accountant Genera'
The Finance epar ment,
All other Dep. r'ments of t e Secr. riat,
The Director of Publicity,

2. The Director of Publicity is requested to give the widest possible publicity to the Press Note.

By order of the Governor of Bombay.

T.H.Oan.at,

Assistant Secretary t the Government of Bombay,
Revenue Department.

.C.
4 Copies 17/6

DRAFT PRESS NOTE.

REMISSION OF LAND REVENUE.

Government has noticed that some misunderstanding still prevails regarding the implication of the orders issued in Government Resolution No. 5547/45, dated 8th August and 4th December 1947, granting remission of 1.3 land revenue in celebration of the Independence Day. The remission is intended to be granted to the actual tiller of the soil. According to the provisions of the law as it stands to-day, an owner cultivator will automatically get the remission for himself but in cases where agricultural lands are cultivated by tenants, the landlords have to reduce the rents payable by their tenants proportionately e.g. if a land is assessed at Rs. 10/- and the rent payable by a tenant to the landlord concerned is Rs. 30/- in respect of the land, the landlord will get a reduction of Re 1/- in the land revenue and he will have to reduce the rent by Rs. 3/- i.e. 10% of Rs. 30/- according to law (viz. under section 16 of the Bombay Tenancy Act).

The position illustrated above is not applicable in cases where rent is received as a share of the crop e.g. 1/3 rd or 1/4th of the total produce. In such cases a landlord can get 10% remission in payment of land revenue only if he proves that he has reduced the rent payable by his tenant by an amount not less than the amount of remission which he would receive i.e. if the land revenue payable by a landlord is Rs. 10/- he is entitled to get a remission of Re. 1/- only if he gives to his tenant a minimum of Re. 1/- as reduction in payment of rent. If he does not do so, he will not be entitled to get the remission and will have to pay full land revenue, the tenant concerned being paid the amount of this remission of Re.1/- in cash by Government from out of the land revenue demand due in respect of the land concerned.

/B.C.

4 Copies 174-5

Bombay Tenancy Act 1939
Criminal Proceedings in
respect of rights under.-

GOVERNMENT OF BOMBAY
Revenue Department.
Circular No. 7249/45.
Bombay Castle, 10th March 1948.

CIRCULAR.

The provisions of sub-section (1) of section 24 of the Bombay Tenancy Act provide a civil remedy for a landlord to take possession of a tenant's holding. Government has, however, noticed that certain landlords instead of pursuing the course of civil Army law, file criminal proceedings against tenants who are thus unnecessarily and/or unjustifiably harassed in contesting their rights under the Bombay Tenancy Act. All Collectors should therefore, see that in such cases the tenants concerned are given proper legal aid to defend their cases and report to Government their results of such criminal cases wherein the District Government Pleader's assistance has been given to the tenant accused. Government also desires that a suitable case should be taken up to the High Court in the usual channel so that an authoritative judicial decision can be obtained on the well established legal position in this behalf for the guidance of all the officers and members of the public concerned.

By order of the Governor of Bombay.

V.N.Sardesai.
Secretary to Government.

To

The Commissioner of Divisions,
All Collectors,
The Divisional Tenancy Officers, Northern, Central and Southern Divisions,
The Home Department,
The Health and Local Government Department,
The Remembrancer of Legal Affairs.

No. of 1948.

Copy forwarded for information and guidance to .-

S.C 17-5-

Remanding a case for re-hearing.

Bombay Tenancy Act, 1939, and Bombay Land Revenue Code, 1879.

Notice of the G.P.O.

The powers of Government under section 28 of the Bombay Tenancy Act, 1939 read with section 211 of the Bombay Land Revenue Code, 1879 are sufficiently wide to enable Government to set aside the orders of the A.C. Kurla, Kalewadi and to remand the cases to him for hearing of or following the proper procedure.

Idl-P.M.L.
27/2

Encumbrancer of Legal Affairs.

G.P. to G.P., No. 1966 dated the 27th February 1948.

S.C.
4 Copies 17-5-

Bombay Tenancy Act.-
Administration of section 20
of -

GOVERNMENT OF BOMBAY.
REVENUE DEPARTMENT.
CIRCULAR NO. 5328/45.
Bombay Castle, 10th April 1948.

CIRCULAR OF GOVERNMENT.

By Government Memorandum, No. 5328/45-I, dated 6th October 1947, the officers concerned have been apprised of the legal opinion that the period of 15 days mentioned in section 20 of the Bombay Tenancy Act is meant either for paying rent by the tenant concerned or for his producing a security therefor. As regards the question of time, limit during which a security should be made liable to pay the amount of rent plus the cost of the proceedings, Government is of opinion that it should be left to the discretion of the Court before which proceedings are pending to grant any time-limit for payment of the rent by the security concerned regard being had to the circumstances prevailing in each case.

2. A question has also been raised as to the form for taking the security Government considers that in view of the provisions contained in section 20 of the Bombay Tenancy Act which imply proceedings before a Court and not a Revenue Officer, the form for taking security should be the same as that in which securities are usually taken by Civil Courts.

3. Government has noticed that some of the officers are confused with the meaning of the word "Court" used in section 20 of the Bombay Tenancy Act. The word "Court" has been defined neither in the Bombay Tenancy Act, 1939, nor in the Bombay Land Revenue Code, 1879. The word "Court" means with reference to context a Court having jurisdiction to hear possession suits i.e. a Civil Court or a Mamlatdar's Court under the Mamlatdars' Courts Act. It does not include a Mamlatdar or a Tenancy Naval Karkun acting under the provisions of the Bombay Tenancy Act. An extract paragraph 5 of the order, No. 3 of 1947, dated 22nd September 1947, passed by the Collector of Ratnagiri in a Khoti Tenancy appeal which clarifies the

position ---

the position is appended hereto for information of officers concerned.

By order of the Governor of Bombay.

B.A. Talpade.
Under Secretary to Government.

Government Resolution No. 5328/45, dated 10 th April 1948.
Revenue Department.

To

The Commissioners of Divisions,
All Collectors,
All Prant Officers.
All Mamlatdars and Mahalkaris
All divisional Tenancy Officers
The remembrancer of Legal Affair

GDR. /22

4541 · 1514

Subd . for information.
2 File in Tenancy /48.
A.A.S.
15-4.

S.C.
4 Copies
22/5

Accompaniment to Government Resolution No. 5328/ 45 Revenue Department dated 10th April 1948.

Extract of paragraph 5 of Tenancy appeal order, No. 3 of 1947, dated 22nd September 1947. Tenancy appeal in the Court of the Collector of Ratnagiri.

PARA 5/- Incidently, it may be wrothwhile considering as a matter of general guidance, whether the Tenancy Aval Karkun was justified in passing an order extending protection to the tenant under the proviso to Section 20 of the Bombay Tenancy Act. Section 20 lays down that where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceedings to eject the tenant, the court shall call upon the tenant to tender to the landlord the rent to arrears together wit cost of suit - and if the tenant complies with such direction within 15 days the court shall - pass an order directing that the tenancy had not been terminated .... It is obvious, therfor, that it is only the court which can extend protection to the tenants. The Mamlatdar does not constitute when acting under the Bombay Tenancy Act either a revenue or Civil court. Not only this it has been held by the Remembrancer of legal Affairs that the Mamlatdar working under the Bombay Tenancy Act could not be a court and consequently not either a revenue or a civil court (vide his opinion O. 4698, dated 7th May 1947). The opinion of the Remembrancer of legal Affairs is in agreement with the Government view indirectly displayed in paragraph 4 of Government Circular, Revenue Department, No. 1140/45, dated 5th March 1946 at x item 7 on page 7 of th e guide to the Bombay Tenancy Act, 1939 . In view of the above legal position the Tenancy Aval Karkun was no right in extending protection to the tenant under section 20 of the Bombay Tenancy Act.

No. of 1948.

Copy forwarded for information and guidance to.-

C.C.
4 Copies 12/5

Office of the R.L.A.

The Bombay Tenancy Act extends to the whole of the Province of Bombay except the City of Bombay. Under Government notification, Revenue Department, No. 1140-45, dated the 11th April 1946, Government has extended the provisions of the Bombay Tenancy Act to the Bombay Suburban District. The Bombay Suburban District comprises certain villages of which 28 mentioned in Part II of the Greater Bombay Laws and Bombay High Court (Declaration of Limits) Act, 1945, form part of Greater Bombay. Consequently, the Bombay Tenancy Act is deemed to be applied to these 28 villages. The question raised for the consideration of the Remembrancer of Legal Affairs is to whom will an appeal under section 12(3) of the Bombay Tenancy Act lie.

Under section 12(3) of the Bombay Tenancy Act, an appeal from the order of a Mamlatdar can lie to the First Class Subordinate Judge within whose jurisdiction the land is situated. By virtue of section 5(1) of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, the High Court shall have and exercise ordinary original civil jurisdiction within the areas for the time being comprised in Greater Bombay. Consequently the High Court alone has original jurisdiction in these 28 villages comprised in the Greater Bombay. It follows, therefore, that there is no First Class Subordinate Judge in this area. Since the Bombay Tenancy Act has been applied to the Bombay Laws and the Bombay District in 1946, that is to say after the Greater Bombay District Laws and the Bombay High Court (Declaration of Limits) Act 1945, was enacted, the former Act would not be mentioned in Schedule I to the latter Act specifying the necessary amendments and consequently the anomalous position has arisen. The Bombay Tenancy Act will have to be amended I

In that connection, it may be pointed out that the Mamlatdars' Courts Act, 1906 is not applicable to the said villages comprised in the Greater Bombay.

Sd/- 7-4

Remembrancer of Legal Affairs.

U.R. to R.D., NO. 3370, dated the 8th April 1948.

S.C.
4 Copies 17/5

Office of the R.L.A.

Whether irregular order passed by Mamlatdar under sec. 12 and there no appeal is made can be made set aside by Government.

Bombay Tenancy Act 1939

Sections 12(3) 38.

. . The view taken by the Revenue Department that Government has no powers to interfere with the orders passed by the Mamlatdar under section 12(2) of the Bombay Tenancy Act, 1939, incorrect . The period of appeal to the First Class Subordinate Judge prescribed by sec. 12(3) having already expired, there is no way to get these irregular orders rectified.

Sd/ 31-3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3159 dated 1st April 1948.

S . . 5 copies 17/5

BOMBAY TENANCY ACT.
Working of section 12 of -

WORKING

GOVERNMENT OF BOMBAY
REVENUE DEPARTMENT
CIRCULAR NO. 4823/45.
Bombay Castle, 15th April 1948

CIRCULAR OF GOVERNMENT.

It is noticed that references from various officers made to Government for exercise of its revisionary powers under section 28 of the Bombay Tenancy Act in respect of orders passed by certain Tenancy Awal Karkuns under section 12 of the act. The facts of the cases reported to Government disclose material miscarriage of justice due either to lack of adherence to proper procedure on the part of the officers concerned or their failure to appreciate evidence produced in proceedings. It is also noticed that certain Mamlatdar fix reasonable rent @ 1/3rd of the total produce as notified under rule No. 10 of the Bombay Tenancy Rules, 1947, without going into the merits of the case. Government cannot quash such orders in view of the specific provisions of section 28 vide Extracts from Remembrancer of Legal Affairs opinion No. 3035, dated 29th March 1948 and No. 3659, dated 1st April 1948 on the point which are appended hereto for the information and guidance of the officers concerned.

Attention of the officers concerned is also invited to the orders in paragraph 3 of Government Circular, No. 5639/45, dated 19th November 1947 which cover cases under section 12, the intention being to avoid miscarriage of justice. In order to ensure that provisions of section 12 are properly administered the following instructions should be strictly followed.

The provisions of section 12 of the Act aim at settling any dispute between a landlord and tenant and x ensuring to the tenant his due share our of the total produce as also lawful and equitable rent to the landlord. The object can be achieved if the Mamlatdar is to whom an y application is made under section

12 goes into the details of each case, collects information on the points mentioned in sub-section 5 of section 12 and rule No. 7 of the Bombay Tenancy Rules and then decides as to the - reasonable rent which a tenant should pay to the landlord/the reasons/being mentioned in detail in the order

Government desires that Mamlatdars should submit for information every week to the Collector concerned copies of their orders passed under section 12 of the Act the Collector themselves about the legality and propriety should personally going through copies of such orders and satisfy themselves about the legality and propriety of each order. If in any cases the Collectors think that the orders passed Mamlatdars are not warranted by the results of the inquiry are detrimental to the interests of the tenants they should immediately arrange for advising the tenants concerned to file appeals against the Mamlatdars' decisions before the Civil Judge, Senior Division, concerned within the prescribe time limit of two months, legal aid being granted to the tenants if necessary in accordance with the orders issued in Government Circulars, No. 4727/45, dated 12th July 1947 and 22nd August 1947, and report such cases to Government for information every month.

By order of the Governor of Bombay.

W.N.Bakhtiyar
Deputy Secretary to Government.

Government Circular No. 7823/45, dated 13th April 1948, Revenue Department.

The Commissioners of Divisions,
All Collectors,
All Prant Officers,
All Mamlatdars and Mahalkaris,
The Divisional Tenancy Officers, Northern, Central and Southern Divisions,
The Remembrancer of Legal Affairs.

GDP/13

S.C. 4 Copies 17/5

(Extract from Remembrancer of Legal Affairs Tamil Nadu No. 3035, dated 29th March 1940).

"Section 28 specifically precludes Government from revising the orders passed under section 12. Consequently Government has no jurisdiction to interfere with the orders passed by the Tamlatdar. No appeals are also preferred against the orders of the Tamlatdar in all these cases to the First Class Subordinate Judge under section 12(3). The question raised for the consideration of the Remembrancer of Legal Affairs is whether Government or the Commissioner cannot simply advise the Tamlatdar to revise his decisions suo motu.

2. In making enquiries under section 12(1) as regards reasonable rent, the Tamlatdar exercises the jurisdiction as a subordinate of the First Class Subordinate Judge, and the person or the party aggrieved by the decision of the Tamlatdar can appeal to the First Class Sub-Judge, within whose jurisdiction the land is situated. Under the Act there is no provision empowering a Tamlatdar to revise his own order suo motu. Ordinarily a court competent to pass order can amend any clerical or arithmatical mistakes in the judgments or orders, or errors arising therein from any accidental slip or omission, at any time either on its own motion or on the application of any of the parties. (cf. section 152 of the Civil Procedure Code). In all these cases, which were decided by the Tamlatdar, there was no such error or clerical or arithmetical mistake. Consequently it would not be lawful for the Tamlatdar to review his own orders however contrary they are to the provisions of section 12."

S. C.
4 Copies 18/5

(Copy of the Remembrancer of Legal Affairs' opinion No. 3159, dated the 1st April 1948).

Whether irregular order passed by Mamlatdar under Section 12 and Where no appeal is made can be set aside by Government.

....

Bombay Tenancy Act 1939. Section 12(3), 28.

The view taken by the Revenue Department that Government has no powers to interfere with the orders passed by the Mamlatdar under section 12(2) of the Bombay Tenancy Act, 1939, is correct. The period of appeal to the First Class Subordinate Judge prescribed by section 12(3) having already expired, there is no way to get these irregular orders rectified.

*****

No. of 1948.

Copy forwarded for information and guidance to :

~~CDP/14~~.

S.C.
4 Copies 18/5

Bombay Tenancy Act : 1939
Payment of compensation in
respect of de-requisitioned lands.

GOVERNMENT OF BOMBAY.
REVENUE DEPARTMENT.
CIRCULAR No. 5935/45.
Bombay Castle, 12th April 1945

CIRCULAR OF GOVERNMENT.

It has been represented to Government that the procedure laid down in paragraph 1 of Government Circular, Revenue Department, No. 5935/45, dated 20th September 1947 for ensuring that the amount of compensation payable in respect of de-requisitioned lands is utilised towards their repairs may lead to delay in restoring the lands to their original state and may also be impracticable where the landlord or the tenant has necessary money to carry out the repairs at his own cost in first instance. In modification of the above orders Government is, therefore, pleased to direct that the officers concerned, instead of calling upon the landlords and the tenants individually to repair the lands, should call in a meeting the landlords and the tenants concerned and decide the question as to who should repair any particular land. If the person agreeing to repair any particular land has no money to start the work, the Mamlatdar, if he is satisfied of the bona-fides of the person concerned, should grant a small amount as advance on execution of an indemnity bond. If however, the Mamlatdar has even the least doubt about the persons bonafides, he should not accept the offer but straightaway entrust the work to a local contractor.

By order of the Governor of Bombay.

4762
20-4-48

S. N. Navalkar.
Assistant Secretary to Government.

To
The Commissioners of Divisions,
The Collector of Bombay,
The Collector of Nasik
All other Collectors
The Accountant General (through the Finance Department)
The Legal Department
The Finance Department,
All Departments of the Secretariat (expect the Separate Department).

No. of 1840.

Copy forwarded for information and guidance to :

~~CDR/14.~~

S.C. 4 Copies
18/5

Office of the R.L.A.

Farming of Co-operative Farming Society.

Bombay Tenancy Act, 1939.

It appears that the protected tenants of Vedchi intend to form a Co-operative Farming Society of Raniparaj. The Remembrancer of Legal Affairs is requested to advise whether the law prohibits the formation of a joint Farming Co-operative Society of Tenants.

Ordinarily there can be no legal objection to farmers forming Co-operative Farming Society as a joint enterprise. Such society may be of four types - (1) Co-operative Better Farming Society, (2) Co-operative Joint Farming Society, (3) Co-operative Tenant Farming Society and(4) co-operative Collective Farming Society. Which of these types of Societies would be suitable for protected tenants has to be considered with reference to the rights of such tenants under the Bombay Tenancy Act, 1939. The rights of a protected tenant under the Bombay Tenancy Act are statutory and are not assignable. These tenants can no doubt form a Co-operative Farming Society for their economic improvement by providing better means of cultivation and disposal of their produce, but informing of such Society by protected tenants, care will have to be taken to see that their rights under the Bombay Tenancy Act are in no way prejudiced thereby, Under section 5(2)(d) a protected tenant cannot sub-let the land nor can he cease to cultivate it personally; since otherwise the tenancy will be liable to be terminated. While forming a Society care should be taken to see that the rights and interests of the protected tenants in these holdings are in no way interferred with by or transferred to the Society. A Co-operative Society of the type called Better Farming Society considered at pate 27 of Mehta's Report would, it appears, be suitable for these protected tenants. The Revenue Department may advise accordingly and inform the organisers of such societies

1'/5

that

that they should before getting these Societies registered frame proper by-laws with a view to ensure that the rights of those tenants under the Bombay Tenancy Act are in no way affected by the formation of such Society.

Sd/ 3-4

Remembrancer of Legal Affair .

U.R. to R.D., No. 3259, dated the 5th April 1948.

S.C.
4 Copies 18-5

Office of the H.L.A.

It appears that 171 applications were made to the Mamlatdar of Malapur for the fixation of reasonable rent, but the Mamlatdar, in all these cases, referred the applicants to the notification of average yield published under rule 10 of the Bombay Tenancy Rules, 1947, and filed the applications by declaring that 1/3rd yield given in the notification should be taken as the reasonable rent, without proceeding under section 12 of the Bombay Tenancy Act. Section 28 specifically precludes Government from revising the orders passed by the Mamlatdar. No appeals are also passed under section 12. Consequently Government has no jurisdiction to interfere with the orders passed by the Mamlatdar. No appeals are also preferred against the orders of the Mamlatdar in all these cases to the First Class Subordinate Judge under section 12(3). The question raised for the consideration of the H.L.A. is whether Government or the Commissioner cannot simply advise the Mamlatdar to revise his decisions suo motu.

2. In making enquiries under section 12(1) as regards reasonable rent, the Mamlatdar exercises his jurisdiction as a subordinate of the First Class Subordinate Judge, and the person or the party aggrieved by the decision of the Mamlatdar can appeal to the First Class Sub-Judge within whose jurisdiction the land is situated. Under the Act there is no provision empowering a Mamlatdar to revise his own order suo motu. Ordinarily a court competent to pass order can amend any clerical or arithmetical mistakes in the judgments or orders, or errors arising therein from any accidental slip or omission, at a

S.C.

either on its own motion or on the application of any of the parties. (cf. section 152 of the Civil Procedure Code). In all these cases, which were decided by the Mamlatdar, there was no such error or clerical or arithmetical mistake. Consequently it would not be lawful for the Mamlatdar to review his own orders however contrary they are to the provisions of section 12. It appears, therefore, that the view expressed at "A" of the Under Secretary note at p/ 6 ante would not be legally fessible.

P.M. Lad/ 27.3
Remembrancer of Legal Affairs.

U.R. to R.D., No. 3035 dated the 29th March 1948.

D~~15~~/24

S.C.

4 Copies 18/5

L.D.R.I.NO. 1593 dt. 10-2-48

[Submitted,

2. The Commissioner, S.D. in his letter at p. 1 ante states as follows .-

"The "Word "Court" is not defined either in the Tenancy Act or the L.R. Code. It is presumed that the word "Court" mentioned in section 20 refers to the Civil Court and does not include a Mamlatdar or a Tenancy A.K. acting under the provisions of the Tenancy Act and that it is only competent for the Court to pass an order for ejectment if the tenant does not pay the rent or offer security within ~~it~~ 15 days from the date of the Court's directions under section 20 of the Act. The presumption may ~~m~~ kindly be confirmed".

The R.D. on this writes as follows .-

"The word "Court" in section 20 of the B.T.Act means a civil court or a Mamlatdar's Court. The question of defining this word was considered in the technical difficulties in the administration of the B.T. Act It is proposed in those papers to define the word as at "A" above, In the meantime the R.L.A. may see u.o.

3. The term "Court" in section 20 of the Act besides meaning a Civil Court includes a Mamlatdar acting under section 24, but this question as stated by the ~~A~~ after A.L.R. (Mr. Hal day) in notes underlying R.L.A.'s opinion No.1808, dated 12-3-1943 (which was with regard to the old section 20) is not free from doubt.

No legal point is involved in the R.D. reference Whether the term "Court" in section 20 of the Bombay Tenancy Act should be defined as a Civil Court or a revenue Court is primarily an administrative matter and as such for R.D. to decide as to how it should be defined]

S.C. 4 (Opies 18/5

The R.D. Office view is that the word "Court" in section 20 of the Bom. Tenancy Act, 1939 means a Civil Court or a Mamlatdar's Court. The question for R.L.A.'s consideration is whether the R.D. view is correct.

It is no/ doubt true that the term "Court" is not defined in the Act. However, the term "Mamlatdar"as defined in cl. (5) of section 2 includes a Mahalkari and any other officer/ whom the Provl. Govt. may appoint to perform the duties of a Mamlatdar under this Act. Contrast the provisions of the Mamlatdars' courts Act where under section 5(1) it is made absolutely clear that every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and under section 23(3) of that Act even the Collr. taking proceedings thereunder shall be deemed to be a Court. Compare 40 Bom.L.R. 104 The Mamlatdar working under the Bom. Tenancy Act would not, therfore, be a Court, and consequently not Mamlatdar's Court nor a Revenue Court (cf. R.L.A.'s opinion No. 4698, dt. 8-5-47). A/The view expre' sed by the Commr. S.D' in the letter No. A.D.... -414 dt 24/29-11-47 is correct. R.L.A''s ~~p. lette~~ Opinion No. 4698 dated 7-5-1947./A p. 35 of ct. fee s/47.

Reply may be as at A/A of R.A.S's note

BTK 24/2

R.L.A. P.W.Lad 24-2

U.R. to R.D. No. 1924 dt 26-2-48.

S.6.
4 Copies 18.5

L.D.R.I.No. 3754 dated 30-3-1946

Submitted,

2. The Collector of Thana in his letter states that Mr. S.D. Nawalkar of Bombay has taken from Government some lands at Mira and Bhayander in Thana District on lease for reclamation for a period of 999 years and executed a lease on 9-2-1908. Mr. Nawalkar does not cultivate the land personally; but has rented it to tenants. He pays land revenue to Government and recovers rent from his tenants. He is the occupant of the land. According to the definition of the word "tenant" given in the Land Revenue Code, the lessee Mr. Nawalkar cannot claim to be a tenant. The land cultivated by the tenants does not belong to them and is not cultivated personally by the lessee. He is therefore of opinion that they are tenants within the meaning of section 2-A of the Bombay Tenancy Act 1939 and are entitled to the benefit provided by the Act.

The R.D. requests the R.L.A. to state whether the view of the Collector is correct and whether it is not covered by his opinion No. 1947 dated 27-2-1948.

The question for the R.L.A.'s consideration is whether the sub-lessees of lands held on lease from the Crown are entitled to the benefits provided by the Act.

3. Section 25(1) of the Bombay Tenancy Act 1939 provides that nothing in the Act shall apply to lands.-

1) held on lease from the Crown or a Co-operative Society or

2) held on lease for the benefit of an industrial or commercial undertaking.

In the R.L.A.'s opinion referred to by the R.D. the R.L.A expressed the view that since under section 25(1) of the Act lands held on lease from

the Crown are exempt from the provisions of the Act. The lease or sub-lease of such lands would as well as be exempt from the provisions of the Act. Thus not only Mr. Nawalkar but his tenants as well who are the sub-lessees will be exempted from the Act.

13/4/48.

The Collector of Thana states that under the terms of the lease dated 9-2-1908 Govt. has given certain lands at Mira and Bhayander to one Mr. Sunderrao Dinanath Nawalkar for reclamation. Mr. Nawalkar does not cultivate the land himself but has rented it to others. The Collector considers that as the relation between Mr. Nawalkar and his tenants is like that of a landlord and tenants, the provisions of the Bombay Tenancy Act would be applicable and the tenants would be entitled to the benefits provided by the Act. The R.L.A. is requested to advise whether the Collector's view is correct or whether it is covered by R.L.A.'s opinion No. 1947 dated 27-2-48.

It is admitted by the Collector that the lands are held by Mr. Nawalkar on lease from the Crown. That being so, they would, as pointed out in R.L.A.'s opinion No. 1947 dated 27-2-48, be exempt from the provisions of the Bombay Tenancy Act (see sect. 25(1)

If approved reply may be :-

"The view expressed by the Collector of Thana is not correct. The case is covered by the R.L.A.'s opinion No. 1947 dated 27-2-48".

Idt B.P.B. 13/4
A.L.R. Idt R.T.K. 14/4

P.S.Land 14/4

U.R. to R.D. No. 3715 dt 16-4-48.

S.C. 4 Copies
18-5

Office of the R.L.A.

It appears that one Kasturchand Balchand of Shirpur filed a tenancy suit No. 36 of 1947 against one Shamrao Totaram in the court of the Mamlatdar, Shirpur. The Mamlatdar treated it as an ejectment suit for non-payment of rent for the year 1946-47 under section 20 of the Bombay Tenancy Act and proceeded in the matter. (see p. 1 of file No. 1) After hearing the parties and considering the evidence recorded in the case, the Mamlatdar dismissed the suit on the ground that the plaintiff's suit fell under section 20 of the Bombay Tenancy Act and the opponent was not a contumacious defaulter. Against that order the plaintiff applied to the Collector who transferred it to the Prant Officer for disposal. The Prant Officer dismissed the appeal The plaintiff has now applied to Government in revision. The Commissioner, C.D., observes in his endorsement at p. 21 as follows.-

> "The opponent has admitted that he had not paid rent for the year 1946-47. His tenancy was therefore liable to be terminated under section 5(2) clause (b) of the Bombay Tenancy Act and the Mamlatdar consequently should have passed an order in favour of the applicant under section 24(1A) of the Act. Sections 4(1)(b) and 20 of the Act to which a reference has been made in the Mamlatdar's order have no application in the case."

The R.L.A. is requested to advise whether the view taken by the Commissioner is correct.

2. No application in revision would lie in this case to Government. Section 20 of the Bombay Tenancy Act preserves indirectly the jurisdiction of the Mamlatdar's Court and of the civil court to award possession to a landlord on the ground of termination of tenancy. In the present case, the applicant filed the tenancy suit in the court of the Mamlatdar, Shirpur, and that court had jurisdiction to entertain that suit. In fact the Mamlatdar

treated...

treated it as a tenancy suit filed in the court of the Mamlatdar and proceeded with it. Consequently, whatever order the Mamlatdar made would be deemed to be an order passed by him under the Mamlatdar's Courts Act, 1906. Under section 23(3) of that Act, the order pf the Mamlatdar was liable to revision by the Collector or the Prant Officer. In the present case the Prant Officer, to whom the application for revision was transferred by the Collector, confirmed the order of the Mamlatdar. No revisional powers are conferred by the Section on Government against the order passed by the Prant Officer. If the applicant is aggrieved by the order of the Mamlatdar or the Prant Officer it is open to him to go to High Court in revision. The Mamlatdar having entertained the tenancy suit in exercise of the powers under the Mamlatdar's Courts Act, the question of his proceeding under section 24(1A) would not arise. Consequently, thepoint raised by the Commissioner, C.D., does not arise.

P.M .Lad

29-3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3084 dated the 30th March 1948.

S.C. 4 Copies
18/5

Office of the R.L.A.

Application of Bombay Tenancy Act , 1939 to assigned Watan lands- Bom. Tenancy Act 1939, Secs. 5(2) or 7

As pointed out in R.L.A.'s opinion No. 8370 dated 14-8-1947, the alienation of assigned watan lands would not create any tenancy rights under the Bombay Tenancy Act, 1939, and consequently the Mukhi Matadars who are alienees are not entitled to retain possession of the land as protected tenants. The Collector can resume possession of the land by evicting the Mukhi Matadars under sec. 11 of the Bombay Hereditary Offices Act.

P.M.Lad

28-4

Remembrancer of Legal Affairs.

U.R. to R. D. No. 4141 D/- 29th April 1948.

S.C.

4 copies 18/5

Office of the R.L.A.

Bombay Tenancy Act, 1939 - Section 25(1)

Lands held on lease from the Crown.

The view taken by the Civil Judge, Mahad, is correct. Since under section 25(1) of the Bombay Tenancy Act, 1939, lands held on lease from the Crown are exempt from the provisions of the Act, the lease or sub-lease of such lands would as well be exempt from the provisions of the Act.

P.M.Lad
26-2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1947 , dated the 27th February 1948.

S.C.
4 Copies @ 18/5

Office of the R.L.A.

rmination of
nancy and taking
ossession of land

Bombay Tenancy Act
939 - sections 5(2)
0, 24(1A) and 28.

It appears that one Khwaja Kusabuddin made an application under section 24(1) of the Bombay Tenancy Act, 1939, to the Mamlatdar of Taloda, for possession of his land on the ground that his tenant failed to pay rent for the year 1946-47. The Mamlatdar, while holding that the proper course for the landlord was to file an ejectment suit under section 20 of the Bombay Tenancy Act on the ground of non-payment of rent by the tenant, ordered that the tenancy in respect of the land was terminated for non-payment of rent within the prescribed period according to section 5(2) of the Tenancy Act. An appeal is filed against that order to the Collector who appears to be of the view that the Mamlatdar should have ordered restoration of possession under section 24(1A), which, according to him, excludes the jurisdiction of the civil court. The question raised for the consideration of the R.L.A . is whether the view taken by the Collector is correct.

2. Section 20 of the Bombay Tenancy Act, 1939, clearly retains the jurisdiction of the civil court and of the Mamlatdar's Court for awarding possession to a landlord on the ground of termination of tenancy Sub-section (1A) of section 24 places a restriction on the power of a landlord to obtain possession of his land held by a tenant. That provision merely prescribes that the landlord shall have to obtain possession only by an order of the Mamlatdar. That means an order of a Mamlatdar would be absolutely essential before a landlord x can take possession; but this provision does not purport to give x jurisdiction to the Mamlatdar to decide the right of a landlord to obtain possession, but such right can be decided only by a civil court or the Mamlatdar's

court. Consequently section 20 and section 24(1A) have to be read together and reconciled and the only way to reconcile would be to hold that a landlord after obtaining a decree either in the civil Court or in the Mamlatdar's Court will have to apply to the Mamlatdar for obtaining possession by virtue of the decree passed by the civil court or the Mamlatdar's court; otherwise section 20 would be inexplicable (see R.L.A.'s opinion No. 8088 dated 6-8-47). Consequently the view taken by the Mamlatdar that he had no jurisdiction to award possession on the ground of termination of tenancy is correct. It may also be mentioned that the order passed by the Mamlatdar about the termination of tenancy on the ground of non-payment of rent was not called for at all. The Act does not contemplate any such order by the Mamlatdar. Section 5(2) only provides for the circumstances in which the tenancy of a protected tenant can be terminated. It is for the landlord to terminate the tenancy if those conditions are satisfied and to seek relief in a civil court or the Mamlatdar's court for possession. If the tenant disputes the termination of tenancy, it would be for the civil court or the Mamlatdar's court, as the case may be, to decide whether the tenancy was lawfully terminated by the landlord. Obviously, therefore, the Mamlatdar's order in the present case was without jurisdiction and Government may set it aside under section 28.

P.M.Lad
29-3

Remembrancer of Legal A ffairs.

U.R. to R.D.No. 3087 dated the 30th March 1948.

S.C.
4 Copies 18/5

Office of the R.L.A.

Fixing of rent
Void proceedings
Bombay Tenancy
Act, 1939.

It appears that the property of Maheshwar Moreshwar Bhave is under the management of the Collector and Court of Wards, Kolaba. The Mamlatdar of Pen, who is managing the estate of the ward, applied on 14th January 1947 to himself as Mamlatdar for fixing reasonable rent in respect of the lands of Mr. Bhave. The Tenancy Aval Karkun, who heard the application, passed an order on 10th June 1947 fixing the rent. In doing so the Tenancy Aval Karkun did not issue any notice to the tenants as required by rule 15 of the Bombay Tenancy Rules and no formal enquiry was held under section 12(2) of the Bombay Tenancy Act. The Revenue Department considers that the irregularities committed by the Tenancy Aval Karkun can be rectified by the appellate authority. Since, however, the prescribed time limit for appeal has elapsed, the Mamlatdar should be asked to appeal against the decision requesting the Court to extend the time limit in its inherent powers, or the High Court may be moved in revision. The R.L.A. is requested to advise in the matter.

2. Under section 12(2) of the Bombay Tenancy Act, 1939 an appeal from the decision of the Mamlatdar is required to be filed within two months. There being no provision in the Act enabling the appellate Court to extend the time limit, no appeal would be competent at this stage. The Aval Karkun who passed the orders not being a Court, the High Court can have no revisional jurisdiction, Consequently, no revisional application would also be competent. The proposal made by R.D. would not, therefore, be legally feasible.

> "Enactments regulating the procedure in courts seem usually to be imperative and not merely directory. If, for instance, an appeal from a decision be given with provisions requiring the fulfilment of certain conditions, such as giving notice of appeal and entering into recognisance, or transmitting documents within a certain time, a strict compliance would be imperative and non-compliance would be fatal to the appeal." (pp. 324-325 of Maxwell on Interpretation of Statutes).

S.C 18/5

"The same imperative effect seems, in general, presumed to be intended even where the observance of the formalities is not a condition enacted from the party seeking the benefit given by the Statute, but a duty imposed on a Court or public officer in the exercise of power conferred on him when no general inconvenience or injustice calls for a different construction.... The strict observance of the provision in the Public Worship Regulation Act, 1874 requiring that the bishop should, within 21 days, send to an inculpated clergyman a copy of the representation of the illegal acts imputed to him, was held essential to the validity of the proceedings subsequently taken against him so that these proceedings were void where the copy had not been sent till after the prescribed time." (ibid, p. 325).

Section 12(2) of the Bombay Tenancy Act provides that on the receipt of an application under sub-section (1), the Mamlatdar shall give notice to the landlord or to the protected tenant, as the case may be, and, after holding a formal enquiry in the manner provided in the Bombay Land Revenue Code, 1879, shall determine the reasonable rent of the land. Under sub-section (10) the application is required to bear a Court-fee stamp of-/8/-, and under rule 6 an application for determination of reasonable rent shall be in Form II. The procedure prescribed under sub-section (2) of section 12 should be considered imperative. The tenancy Aval Karkun exercising the powers of a Mamlatdar under section 12 did not give notice to the tenants nor did he hold a formal enquiry. He entertained the application without the necessary Court-fee being paid Consequently, he committed a breach of sub-section (2) and sub-section (10) of section 12 as a result of which his order can be treated as void and ineffective and fresh proceedings may, if necessary, be commenced.

P.M. Lad
13-4

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3613 dated the 14th April 1948.

S.C.
4 Copies 18/5

Submitted.

2. The President of the Law Academy, Poona in his letter dated 18th march 1948 states that some tenancy Aval Karkuns or Mamlatdars are returning applications bearing eight annas stamps under rule 5 of the Bombay Tenancy Rules, on the ground that they do not bear a Court-fee stamp of ten annas as increased by the Bombay Increase of Court Fee Act, 1943. He considers that the Court-fees prescribed by the Bombay Tenancy Rules, 1947 are not Court fees leviable under the said Act and the increase in Court fees will not be applicable in matters under the Tenancy Act.

The R. D. has referred the papers to the H.L.A. with a request to stat. whether the Bombay increase in Court fees Act, 1943 applies to the levy of the Court f-ees under rule 5 of the Bombay Tenancy Rules, 1947.

3. Section 2 of the Bombay Increase of Court fees Act, 1943 provides that -

"Notwithstanding anything contained in the Court-fees Act, 1870 it its application to the Provinces of Bombay (hereinafter xk called the principal Act) all fees leviable under the principal Act shall be increased by a surcharge at the rate specified in the schedule annexed hereto."

It is therefore clear that the fees that were increased by the surcharge were fees leviable under the Court fees Act, 1870. The fees leviable under the Bombay Tenancy x Rules, 1947 and in particular under rule 5 there are not fees leviable under the Court fees Act but under the Bombay Tenancy Act, 1939. (Vide Babu Hingappa v. Paragonda Parsappa 48 B.L.R. p. 108).

The Bombay increase of Court fees Act, 1943 has therefore no application to the fees specified in rule 5 of the Bombay Tenancy Rules, 1947. The view taken by the President, law Academy, Poona is correct.

S'e. 18/5

The question for R.L.A.'s consideration is whether the Bombay increase of Court-fees Act, 1943, applies to the levy of Court-fees under rule 5 of the Bombay Tenancy Rules, 1947.

Under cl. (d) of sub-section (2) of section 27 of the Bombay Tenancy Act, 1939, the Provl. Govt, is empowered to make rules providing for the value of the Court-fee stamp payable on an application to the Mamlatdar or an appeal to the Civil Judge (Sr. Division) under section 12. In exercise of power so conferred by section 27(2)(d), Govt. has framed a rule (vide rule 5) providing that every application made to a Mamlatdar under the Act shall bear a* Court-fee stamp of Rs. 2/-. It is thus clear that rule 5 of the Bombay Tenancy Rules, 1947, prescribes the value of the Court-fee stamp payable on an application of Memorandum of appeal made under the Bombay Tenancy Act. Under section 2 of the Bombay Increase of Court-fees Act, surcharge is imposed on all fees leviable under the Court-fees Act". It cannot therefore, apply to the Court-fee leviable under the Bombay Tenancy Act and the rules made thereunder (cf. Babu Nigappa v. Paragonda, 48 Bom. L.R.P. 108). The view expressed by the President, Law Academy, in his letter dt. 18-3-48 is correct. The Bom. Increase of Court-fees Act, 1943 has no application to the fees prescribed by rule 5 of the Bom. Tenancy Rules, 1947.

* Court fee stamp of annas eight and every Memorandum of appeal filed against the order of a Mamlatdar shall bear a =

A - A may be the reply

RTK 14-4

R.L.A. P.M.Lad

14-4.

S.C. 4 Copies

18/5

Office of the R.L.A.

The Bom. Increase of Court-fees Act, 1943- Whether applicable to fees under rule 5 of the Bom. Tenancy Rules, 1947

The view expressed by the President, Law Academy, in his letter dated 18th March 1948 is correct. The Bombay Increase of Court-fees Act, 1943 has no application to the fees prescribed by rule 5 of the Bombay Tenancy Rules, 1947.

P.M.Lad 16-4

Remembrancer of Legal Affairs

U.R. to R.D.,NO. 3679 dated the 15th April 1948.

VERY URGENT

Bombay Tenancy for Administration of section 20 of -

57.

GOVERNMENT OF BOMBAY
REVENUE DEPARTMENT
CIRCULAR NO. 5328/45.
Bombay Castle 29th APRIL 1948.

CIRCULAR OF GOVERNMENT

Government has noticed that very few officers correctly know the implication of the provisions of section 20 of the Bombay Tenancy Act. In order to secure proper administration of the provisions of that section, the position is clarified below;

Section 20 of the Bombay Tenancy Act has been enacted with the intention of enabling a tenant to save his tenancy by paying arrears of rent within the stipulated period during the currency of an ejectment suit filed by a landlord on the ground of non-payment of rent. The meaning of the word " Court" used in the section has been clarified in paragraph 5 of Government Curcular, No. 5328/45, dated 10th April 1948. It is accordingly clear that section does not empower a revenue officer acting under the Bombay Tenancy Act to hear and decide possessory suits but the section indirectly preserves the jurisdiction of the Mamlatdars' Court and of the Civil Court to award possession to a landlord on the ground of termination of tenancy for non-payment of rent. It is therefore competant for a Mamlatdar under the Bombay but not a Tenancy A Karkun appointed to do the duties of a Mamlatdar under the Bombay TEnancy Act, to entertain an application for possession of any land for non-payment of rent by a tenant and proceed with the matter as a tenancy suit under the Mamlatdars' Courts Act, 1906, An appeal can be against an order of a Mamlatdar under the Mamlatdars' Courts Act only to the Collector or the Prant Officer exercising powers of the Collectors under section 23(5) of that Act and Government has no revisionary powers against an order apssed by the Collector or the Prant Officer as such appeal and the agrieved party has then a right to approach the High Court in revision.

S.C.
4 Copies 18/5

2. Instances have also been brought to light in which the provisions of section 20 vis-a-vis the provisions of section 5) (2) and 24 (1A) of the Bombay Tenancy Act have been misunderstand. Sub-section (1A) of section 24 places a restriction on thepower of a landlord to obtain possession of ~~the~~ his land held by a tenant. That provision merely prescribes that the landlord shall have to obtain possession only by an order of the Mamlatdar which is absolutely essential before a landlord can take possession. This provision does not purport to give jurisdiction to the Mamlatdar to decide the right of a landlord to obtain possession, but such right can be decided only by a civil court or the Mamlatdars' Court. Accordingly a landlord can apply to a Mamlatdar under section 24(1A) for possession of any land by virtue of a decree previously obtained by him either in the Civil Court or the Mamlatdars' Court. ~~xxx~~ This will however not apply to cases of bona-fide surrender of tanancies in which no decree of a Civil or Mamlatdars' Court need be obtained before applying for possession under section 24(1A).

Applications are made to Mamlatdar or a Tenancy Aval Kaukun for termination of tenancy for non-payment of rent ~~and~~ for possession of ~~x~~ land under section 5(2) read with sections 20 and 24(1A) of the Bombay Tenancy Act and orders are passed by the officers concerned for terminating a tenancy on ground or grounds mentioned in section 5(2) rejecting the requests for awarding possession for want of jurisdiction. The action of the officers concerned in refusing to award possession can be correct in view of the position explained above but their order terminating tenancy is not warranted by the provisions of section 5(2), The provisions of this section only provide for the circumstances in which the tenancy of a tenant can be terminated. The section does not contemplate any order of a Mamlatdar or a Tenancy Aval Karkun directing termination of tenancy. It is for a landlord to terminate the tenancy if the conditions mentioned in sub-section (2) of the section are satisfied and to seek relief in a Civil Court or the

or the Mamlatdars Court for possession if the tenant disputes termination of tenancy. As such an order passed by a Mamlatdar or Tenancy Aval Kurkun directing only termination of a tenancy on any of the grounds in section 5(2) will, be without jurisdiction.

3. The Officers concerned should bear in mind the position clarified in deciding cases under the Act.

By order of the Governer of Bombay,

Covering Circular No.

V.N. Sardesai,
Secretary to Government.

Government Circular, No. 5328/45, Revenue Department, dated 29th April 1948.

To

The Commissioners of Divisions,
All Collectors,
All Prant Officers,
All Mamlatdars and Mahalkaris,
The Divisional Tenancy Officers, Northern, Central and Southern Divisions,
The Directors of publicity (with a request to issue a suitable Brass Press Note in consultation with Revenue Department.

The Remembrancer of Legal Affairs.

No. of 1948,

Copy forwarded for information and guidance to :

S.C. 4 Copies 19/5

Office of the R.L.A.

Lands held on lease from Land Mortgage Bank.

Bombay Tenancy Act, 1939 Section 25(1).

From the reports of the Collector of Kanara and the Mamlatdar of Honavar it would be clear that the Kanara District Co-operative Land Mortgage Bank has taken possession of the Mortgaged property and now holds it as mortgagee in possession. The Bank however appears to have leased the lands to Mr. Farnandez for cultivation at an annual rent of Rs. 350/- . Mr. Fernandes cultivates same lands while the remaining are leased to other tenants on crop-share basis.

Since under section 25(1) of the Bombay Tenancy Act, 1939, lands held on lease from a co-operative Society, are exempt from the provisions of the Act, the lease ans sub-lease of such lands would be exempt from the provisions of the Act (cf. R.L.A.'s opinion No. 1947, dated 27-2-1948). The view taken in R.D. office note is not correct.

P.M.Lad
4/5

Remembrancer of Legal Affairs

U.B. to R.D., No. 4833 dated the 5th May 1948.

S.C. 4 Copies
19-5-

Bombay Tenancy Act 1939. Sections 20, 23 and 24(1).

It appears that the Dundappa R. Pujari of Sholapur, Taluka Mukeri was a sub-tenant of a piece of land for the years 1945-46 and1946-47 and was evicted on the ground of failure to pay rent; whereupon he applied to the Tenancy Aval Karkun, Mukari for restoring possession. The Tenancy Aval Karkun, held proceedings under the Bombay Tenancy Act, 1939 and came to the conclusion that the applicant failed to pay the rent and therefore, ordered that he should pay to the landlord the arrears of rent within 15 days failing which the tenancy should be deemed to be terminated and the landlord entitled to possession of the land. This order of the Tenancy Aval Karkun is considered to be ~~this~~ illegal on the ground that he had no jurisdiction to proceed under sectio 20 of the Bombay Tenancy Act and the procedure followed by him was improper. R.D. has raised the following q uestions for R.L.A.'s opinion .

(1) Whether a Tenancy Aval Kaukun can grant post facto sanction to a landlord's possession under section 24(1A);

(ii) whether he could entertain Mr. Dundappa's application under section 24(1);

(iii) whether he can grant the benefit of 15 days' time limit provided under section 20 in proceedings under section 24(1);

(iv) whether the provisions of section 24(1) empower a Mamlatdar as defined in section 2(5) of the Bombay Tenancy Act to entertain possessary claims including those based on ground of unlawful eviction but excluding those based on ground of unlawful eviction but t.. under sections 4 and 7 of the Bombay Tenancy Act.

2. The questions in the form in which R.D. has raised for R.L.A.'s opinion do not appear to be quite relevant. The proper questions which arise in this case

are.-

(i) Whether the tenancy Aval Karkun's order is lawful;

(ii) if not, what should be the proper order in this case.

3. Since the lease was subsisting on the date on which the Bombay Act XXVI of 1946 amending the Bombay Tenancy Act, 1939 came into operation, the said lease will be deemed to be for a period of not less than 10 years (See. Sections 23). Consequently, Dundappa was entitled to be in possession of the land even though the lease was annual. His eviction from the land was, therefore, unlawful and consequently his application for restoration of possession would lie under section 24(1). The aval Karkun's order granting time to Dundappa to save termination of the tenancy would fall under section 20, but the Tenancy Aval Karkun being neither a Civil court nor a Mamlatdar's court, had no jurisdiction to pass any order under section 20. Consequently, the order passed by him granting time to Dundappa to pay the arrears of rent on pain of termination of tenancy was clearly ultra vires. Since Dundappa's main grievance was that he was unlawfully evicted and was entitled to restoration of possession under section 24(1), the Tenancy Aval Karkun should have proceeded under section 24(2) and passed the necessary order for his restoration. Since there is no dispute about Dundappa's wrongful eviction from the land, Government may set aside the order of the Tenancy Aval Karkun under section 28 and pass an order restoring possession to Dundappa.

P.M.Lad
6-5
Remembrancer of Legal Affairs.

U.R. to R.D. , No. 4408 , dated the 7th May 1948.

B.C.
4 Copies 19-5

Office of the R.L.A.

Right to Restoration of Tenancy

Bombay Tenancy Act, 1939. 4(1)(a) and (b) and Sec. 9

The question raised by the Collector of Ahmedabad in his letter dated 5-8-1947 was this :

"Whether sec. 9 of the Bombay Tenancy Act applies to a case where the tenant who is qualified to be a protected tenant under sec. 4(1)(a) or (b), dies after eviction but before giving an intimation in writing to the landlord of his willingness to hold the land on the same terms and conditions on which he hold it at the time when he was evicted."

As pointed out in the linked case, the right to restoration of tenancy under section 4(2) is a personal right conferred upon the tenant who was evicted by the landlord and who prior to eviction held and cultivated the land personally continuously for a period of not less than six years immediately preceding 1-4-1937 or 1-4-1944, as the case may be. The words "the landlord shall continue the tenancy on the same terms and conditi ns on which such protected tenant was holding it at the time of his death etc." in section 9 clearly indicate that the protected tenant should be actually holding the land as a protected tenant at the time of his death, and it is this right that could be continued to one of his heirs, provided that a notice in writing is given by the heir to the landlord of his willingness to hold the same on the same terms and conditions subject to which the deceased held it. An evicted tenant may be deemed to be a protected tenant entitling him to restoration of possession under sec. 4(2) provided he has exercised his right by intimatin g in writing the landlord, within the prescribed time, of his willingness to hold the land on the same terms and conditions on which he held it at the time when he was evicted. If an evicted tenant dies before such an intimation is given, and before he has come into possession of the land, section 9 cannot be invoked.

P.M.Lad
12-5
Remembrancer of legal Affairs.

U.R. to R.D. No. 8601 , dated the 13th May 1948. S.C. 19

Office of the R.L.A.

le. Interpretation sections 3 and 4

---

abay Tenancy Act, 39.

L.A.No. 1587, ted 15-2-1947.

The question for consideration is whether Explanation I under section 3 applies for computing the six years' period under section 4(1). R.D. is of opinion that the Explanation would not apply but R.L.A. is requested to advise.

Section 3 provides that a tenant shall be deemed to be a protected tenant in respect of any land if (a) he has held such land continuously for a period of not less than six years immediately preceding either (i) 1-1-1938 or (ii) 1-1-1945 and (b) has cultivated such land personally during that period. Explanation I to this section enacts, to speak briefly, that in calculating the period of six years the period during which his predecessor held the land is to be included.

Section 4 of the Act also defines a protected tenant. It enacts :-

"Every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1937 or 1944 and was evicted from such land on or after such date otherwise than by order of a competent court on any of thground specified in section 5(2)".

Explanation I added to section 3 is absent in this section and it is obvious that

S.C.

4 Copies 19-5

that explanation can not be read into the provisions of section 4(1). As explained by the R.L.A in his opinion No. 1567, dated the 15th February 1947, the categories of ~~payments~~ tenures covered by the definitions in both sections are different. Section 3 moreover directs its attention only to the holding of a land, in relation to which the holding of the land by the predecessor-in-title is very relevant indeed whereas such holding would not be quite relevant to section which further requires personal cultivation and eviction. That would seem to be the justification for omitting to add the Explanation to section 4. Nothing is to be added to or taken from a statute, unless there are adequate grounds to justify the inference that the ~~English~~ Legislature intended something which it omitted to express.

P.M.Lad
12-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4613 ,dated the 13th May 1948.

S.C.
4 Copies
19-5

Office of the R.L.A.

Under section 2(a) of the Bombay Tenancy Act, 1939, a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not personally cultivated by the owner and if such person is not a member of the owner's family or a servant on wages, etc., unless the owner has, within one year of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, made an application to the Mamlatdar, within whose jurisdiction the land is situated, for a declaration that the person is not a tenant. We do not know whether any such application was made. Ordinarily, therefore, Babu Kulkarni, who is undoubtedly a mortgagee in possession, would have to be treated as a tenant, provided he was actually cultivating the land. However, it appears from the judgment recorded by the Civil Judge at Bukeri in suit No. 116 of 1944 that practically till 1943-44 Babu Gutar, the original owner, was in possession and was cultivating the land. The civil Judge has recorded his finding that the Kulkarni of the village, who is the Bhauband of Babu Kulkarni, has fabricated the village records to show that Babu Kulkarni was in possession. I do not think that the protection provided by the Tenancy Act need be given to mortgagees in possession of the type of Babu Kulkarni. Now that possession has been given and no substantial injustice has been done to Babu Kulkarni as a mortgagee, there is no reason for any interference by Government in his favour.

P.S. 19-5
12-4
Remembrancer of Legal Affairs

U.R. to R.D. No. 3564 dated 13th April 1948.

Office of the R.L.A.

Section 24(1A)

Bhay Tenancy Act 39.

L.A.'s No. 4595, ted 12-5-1948.

The question has already been considered in R.L.A.'s opinion No. 4595, dated the 12th May 1948 and in ~~xxdex~~ other opinions where the same view regarding the scope of section 24(1A) is ~~x~~ consistently taken. It is for R.D. to consider whether the position should be put beyond doubt by a suitable provision as part of the amending Bill now under consideration.

Id/- P.N.L.
13/5
Remembrancer of Legal Affairs.

V.R. & R.D. No. 4637, dated the 16th May 1948

B.C.
4 Copies 19-5

Office of the R.L.A.

Recovery of possession and jurisdiction of Civil Courts. — — Bombay Tenancy Act, 1939.

It appears that one Mr. G.B.Desai, Pleader from Bulsar, has suggested that the Bombay Tenancy Act should be so amended as to enable the transfer of possessory suits pending in a civil or a Mamlatdar's Court to the Tenancy Aval Kurkuns or Mamlatdars for action under section 24(1) or (1A). Revenue Department considers that the provisions of section 24(1) or (1A) do not oust jurisdiction of a civil or a Mamlatdar's Court but provide an additional safeguard to a tenant and consequently it is not necessary to make a provision in the Bombay Tenancy Act as suggested by Mr. Desai. The R.L.A. is requested to advise whether the provisions of section 24(1) or (1A) do not oust the jurisdiction of a civil or a Mamlatdar's Court.

Sub-section (1) of section 24 of the Bombay Tenancy Act Provides that a tenant entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar in whose jurisdiction such land or dwelling house is situated. Under sub-section 13(1)(c) an application for a direction for obtaining possession of alnd under sub-section (5) of section 7 can be made to the Mamlatdar in whose jurisdiction the land is situated. Section 17(1) prohibits the eviction of a tenant from a dwelling house built at his expense or at the expense of his predecessor-in-title on a site belonging to his landlord. Consequently a tenant may make an application under section 24(1) only if he is entitled

to possession under section 7(5) or section 17(1), and such application can lie only to the Mamlatdar. By section 24(1) separate jurisdiction is created for the Mamlatdar to restore possession of the land or the dwelling house to the tenant if he is entitled to under section 7(5) of section 17(1), as the case may be, and in such cases the jurisdiction of the Civil Court or of the Mamlatdar's court can be deemed to be ousted. It follows, therefore, that if a tenant has to seek remedy for restoration of possession of land or dwelling house as stated above, he will have to apply only to the Mamlatdar and not to the Civil Court or the Mamlatdar's Court. That being the legal position the question of transfer of suits pending in the Civil Court or in the Mamlatdar's Court in respect of matters falling under section 7(1) or section 17(1) will not arise.

Sub-section (14) of section 24 of the Bombay Tenancy Act provides :

> "No landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form."

Under sub-section (2) the Mamlatdar shall held an enquiry in the prescribed manner and pass such order as he deems fit. Sub-section (3) provides for an appeal. Sub-section (5) provides that every order passed by the Mamlatdar under sub-section (2) and every order passed by the Collector under sub-section (3) shall be deemed to be a decree of a civil court and shall be executable as such.

Section 20 provides :

> "Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceeding to eject the tenant, the Court shall call upon the tenant to tender to the landlord the rent in arrears etc.... ; and if the

> tenant complies with such direction etc., the Court shall, in lieu of making a decree or passing an order for ejectment pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated".

This provision clearly contemplates that a landlord can sue either in the civil court or in the Mamlatdar's Court for possession of his land on the ground of termination of tenancy; in other words the jurisdiction of the civil court and of the Mamlatdar's Court has been retained for awarding possession to the landlord. The provisions of section 20 and sub-section (1A) of section 24 have to be read together and reconciled and the only way to reconcile them would be to hold that even 2 after a landlord obtains a decree either in the civil court or in the Mamlatdar's court for possession, he will not be able to execute such decree and obtain possession unless he applies to the Mamlatdar under sub-section (1A) of section 24. To that extent the view taken by R.D. is correct. But it may be observed that the provisions contained in sub-section (1A) to sub-section(5) of section 24 are illegical for the effect of these provisions would be to render nugatory a decree passed by a civil court of a Mamlatdar's court. For an order made by the Mamlatdar under sub-section (2) of section 24 would be doomed to be a decree of a Civil Court. The effect of these provisions would be that there will be two decrees - one of the civil court or of the Mamlatdar's Court and the other of the Mamlatdar or of the Collector under section 24. If these decrees conflict, it is not understood which decree is to be given effect to, and why the decree of the civil court or of the Mamlatdar's Court should be over-ridden by order of the Mamlatdar or of the Collector. It is, therefore, necessary to amend section 24 providing for either ousting the jurisdiction of the civil court and the

Mamlatdar's Court or for withdrawing the powers of the Mamlatdar under section 24(1-A) in cases where the landlord wants to obtain possession on the ground of termination of tenancy.

P.M.Lad
12-5

Remembrancer of Legal Affairs.

U.R. to R.D. , No. 4545 dated the 12th May 1948

O'c.
4 Copies 12-5

Office of the R.T.A.

In this case an application for restoration f possession of certain land was made to the amlatdar of Viramgam under the provisions of ection 24(1) of the Bombay Tenancy Act, 1939. The pplicant averred that he was cultivating the land or about twenty years prior to his eviction on 2-7-1932; that he must be deemed to be a protected enant, and that he had given notice of his willingess to hold the land on the same terms and conditions on which he held it before his eviction. The Mamlatdar observed that the opponent was a ruling chief and, therefore, the execution of a decree, if any, passed against him required prior sanction of the Governor General in Council and that no such sanction had been obtained and produced. Hence, he thought it needless to proceed with the inquiry, because, even if he apassed the decree against the opponent as desired by the applicant, the Court would not be competent to execute it. The Mamlatdar further remarked;

> "It is true that clause (5) of section 86 of the Code of Civil Procedure does not require any such sanction for a tenant to sue his landlord; but this concession is not extended to the execution of decrees. I therefore hold that prior sanction is necessary for execution of a decree against a Ruling Chief."

On these grounds the Mamlatdar dismissed the application.

2. The Divisionsl Tenancy Officer, Northern Divislon, disagrees with the Mamlatdar and states:

> "If the interpretation of the Mamlatdar is correct, no tenant of the Patdi State will have any right open to him under the Tenancy Act. It is true that the Patdi

Durbar is a Ruling Chief of the 7 villages under the Agency limits but so far as the 24 villages in the District limits are concerned, he is only a Talukdar and his position is not the same as he holds within the Agency limits. Institution of a suit or a proceeding under the Tenancy Act is, therefore no bar for their execution on the Talukdar".

3. The R.L.A. is requested to advise whether the view taken by the Divisional Tenancy Officer is correct.

4. The relevant portions of section 86 of the Code of Civil Procedure, as now amended by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, read as follows.-

> (1) Any such prince or Chief may with the consent of the Central Government certified by the signature of a Secretary to that Government but not without such consent be sued in any competent Court.
>
> (3) No such Prince, Chief shall be arrested under this Code, and, except with the consent of the Central Government certified as aforesaid. No decree shall be executed against the property of any such Prince, Chief.
>
> (5) A person may as a tenant of immovable property sue without such consent as in mentioned in this section a Prince, Chief ..... from whom he holds or claims to hold the property.

With these provisions we have to read the relevant provisions of section 24(5) of the Bombay Tenancy Act which says that every order passed by the Mamlatdar under sub-section (2) and every order passed by the Collector under sub-section (3) shall be deemed to be a decree of a civil court and shall be executed as such.

5. In 8 Bombay 415, it was clearly laid down that the Desai of Patdi, in virtue of his being the proprietor of seven villages within the political agency of Kathiawar, is a Ruling Chief. That decision was given in a case where the Desai of Patdi was being sued in a dispute which related to some immovable property situated in the Ahmedabad District. The decision is, therefore, a clear authority against the view taken by the Divisional Tenancy Officer that the Patdi Durbar should not be treated as a Ruling Chief

for the 24 villages in the District of Ahmedabad. It has also been held in K. Narayanan Moothad v. Cochin Sircar 38 Madras 635 and affirmed in K.Naryana Moothad v. Cochin Sirka 39 Madras 661 that a Ruling Chief cannot be sued in British India, whether the suit is brought against him in his sovereign capacity or in his private capacity such as a Trustee of a temple in British India. In short, Patdi Durbar must be treated as a Ruling Chief even for the villages in the Ahmedabad District.

6. The Mamlatdar is right in his view that sub-section (5) of section 86 does not extend to the execution of decrees. Judicial authority in support of that view will be found in the case of Bikram Kishore v. Khaliler Rahaman , A.I.R. 1935 Calcutta 664. At p. 655 of the report, Henderson J. said:

> "On the second point both the Courts below held that no consent is necessary because the respondent is a tenant of the appellant and therefore is entitled to institute a suit without consent under the provisions of sub-section (5) of section 86. In our opinion, sub-section (5) is entirely distinct from sub-section (3). The two sub-sections were really dealing with two quite distinct matters. In view of the plain terms of sub-section (3) wer are of opinion that the consent referred to is necessary before the respondent can proceed against the property of the appellant."

and R.C. Mitter J. on p. 666 said :

> "I am definitely of opinion that sub-section (5) is really a proviso to sub-section (1) Sub-section (3) deals with the question of execution and is independent of sub-section (1)".

7. As under sub-section (5) of section 24 of theBombay Tenancy Act, 1939, the order passed by the Mamlatdar is to be deemed to be a decree of a Civil Court and is executable as such; it follows that it cannot be executed against the property of the Patdi Durbar except with the consent of the Central Government certified in the manner described in sub-section (1) of section 86. To that extent the Mamlatdar's view was correct.

that question would arise only at the time when the execution of the order passed by the Mamlatdar is sought, but not till then. The Mamlatdar was not entitled to dismiss the application on the ground that consent for the execution of the order which he may eventually pass was not forthcoming. Such consent was not a pre-requisite for his entertaining the application, and it is apparent that such consent would not be necessary even for filing a suit by a tenant against the Patdi Durbar. If in other respects the application is in order and the Mamlatdar is competent to deal with it, it was his duty to proceed with the application and make the order and leave the execution to the tenant who may move the Central Gogernment. for consent at that stage.

It is presumed that the personal privilege of an immunity from suit given to the Patdi Durbar has not been affected by any of the recent changes such as joining Saurashtra Union or the impending merger.

P.M.Lad
22-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4946 dated the 24th May 1948.

S.C.
4 Copies 19-5

office of the R.L.A.

Bombay Tenancy Act, 1939.

Protection to vendor.

The view taken by R.D. is correct. According to the decree of the Civil Court Parbhatsang is bound to hand over possession of the land and to pass a sale deed. Consequently his possession of the land until delivery would be that of a vendor. The Bombay Tenancy Act, 1939 cannot afford Parbhatsang any protection.

P.M.Lad.
29-5

Remembrancer of Legal Affairs.

U.R. to R.D. No., 5131 , dated the 31st May 1948.

S.C.
4 Copies
21st May 1956.

Office of the R.L.A.

Appeal to Government.

mbay Tenancy
- section
.

ction aside the
der of a Prant
ficer on appeal

It appears that in this case the Tenancy Aval Karkun awarded possession to the applicant under section 24 (1A) of the Bombay Tenancy Act. On appeal the Prant Officer by his order dated 10th November 1947 set aside the Tenancy Aval Karkun's order but on further consideration, by his second order dated 19th November 1947 restored the order of the Tenancy Aval Karkun cancelling his own order dated 10th November 1947. In other words the Prant Officer revised his own order of 10th November 1947 and in view of the fact that the Prant Officer had no power to revise his own ~~xxgxxxxxxx~~ order, the case has been referred to Government to regularise the Prant Officer's order dated 19th November 1947.

It is true that the Bombay Tenancy Act, 1939, vests no power in the Prant Officer to revise his own order except when the mistake proposed to be rectified is of a formal nature. Consequently, the second order passed by the Prant Officer setting aside his own first order is illegal. If the Tenancy Aval Karkun's order is lawful, there will be no objection to Government cancelling the Prant Officer's both orders under section 28 of the Bombay Tenancy Act and confirming the order passed by the Tenancy Aval Karkun.

P.M.Lad 6/5
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4418 dated 7th ~~x~~ May 1948.

S.C.
4 Copies 21-5

Office of the H.L.A.

ppeal To Government.

mbay Tenancy Act 939.

ections 5(2)(b),) and 24(1-A).

It appears that one Dattatraya Ramchandra Bhagwat of Devrukh applied under section 24(1-A) of the Bombay Tenancy Act before the Tenancy Aval Karkun, Devrukh, for ejecting his tenants from S.Nos. 140/1, 140/2, 140/8, 140/10, 183/4, 183/6 and 184/1 of Khoti village of Ozars on the ground that they failed to pay rent for the period of three years as a consequence of which the tenancy had terminated under section 5(2) clause (b) of the Bombay Tenancy Act. The Tenancy Aval Karkun rejected the application on the ground that the tenants had offered to pay the rent which the landlord failed to accept and consequently there was no failure to pay the rent. Against that order of the Tenancy Aval Karkun Dattatraya appealed to the Collector and the Collector quashed quested the order of the Tenancy Aval Karkun holding that the tenancy had authmatically terminated by reason of a non-payment of rent for three years and the opponents not being the tenants, the application under section 24(1-A) was not tenable and that the Tenancy Aval Karkun would not be competent to pass any order under section 20 of the Bombay Tenancy Act. The Commissioner, S.D. has made a reference to Government on the ground that the view taken by the Collector about the automatic termination of tenancy under section 5(2)(b) of the Bombay Tenancy Act was incorrect and that the question whether the Tenancy Aval Karkun was

a Court for the purpose of section 20 was under the consideration of Government. R.D. the raised the following points for consideration of the R.L.A. .-.

(1) Whether a non-payment of rent within the time prescribed under section 5(2)(b) has the effect of automatic termination of tenancy immediately on breach thereof; and

(2) whether a tenant does not hold the land concerned thereafter as lawful lessee till proceedings either under section 20 or section 24(1-A) are finally decided;

(3) whether the Tenancy Aval Karkun can decide cases under section 20 or section 24(1-A) of the Bombay Tenancy Act.

Section 5(2) of the Bombay Tenancy Act, 1939, provides that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a protected tenant as such tenant shall not be terminated unless such tenant has committed any default as described in any of the clauses (a) to (c) thereunder. This has to be read with section 20 which provides for relief against termination of Tenancy. These provisions are analogous to the provisions of sections 111 and114 of the Transfer of Property Act. In law, therefore, the defaults committed by the tanant would have the effect of termination of the Tenancy. However, the landlord cannot obtain possession except by proceedings for ejecting the tenant in which proceedings the termination of the tenancy would naturally have to be proved. He cannot apply for possession straightly way under section 24(1-A).

A tenancy Aval Karkun can exercise the powers of a Mamlatdar under the Bombay Tenancy Act See the definition of "Mamlatdar" n section 2 clause (5); but the powers of a

Mamlatdar under the Bombay Tenancy Act do not include the powers of the Mamlatdar's Court under section 20. Consequently the Aval Karkun in the present case was not competent enough to decide whether the landlord was entitled to an award of possession under section 20 on the ground of termination of tenancy. The Aval Karkun should have directed the landlord to seek his remedy either in the Mamlatdar's Court or in the Civil Court under section 20. Section 24(1A) does not give jurisdiction to a Mamlatdar to decide the rights between the parties and to award possession. That provision merely places a restriction on the landlord preventing him from obtaining ~~procession~~ possession except under an order of the Mamlatdar, the intention being that the landlord after obtaining a decree either of the Mamlatdar's Court or of the Civil Court should apply to the Mamlatdar for possession under this provision. It follows therefore that the order of the Aval Karkun as well as the order of the Collector not being consistent with the provisions of the Bombay Tenancy Act should be set aside by Government under section 28 as being ultra vires the Bombay Tenancy Act.

P.M. Mad. 13/5
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4646 , dated the 14th May 1948.

S.C.
4 Copies 21-5-

L.D.R.T. No. 2323
Dt. 28-2-48.

Submitted.

This is in connection with a tenancy appeal. The facts of the case are not much material to the point ordered to R.L.A' which is whether under revisionary powers conferred upon Govt. by S. 29 of the Bombay Tenancy Act, 1939, a case can be remanded to the Tenancy Aval Karkun for re-hearing (vide x Under Secy. R.D.'s note dated 21-2-48).

A.A.S. Seen and returned
Attention of the R.D. is invited to R.L.A''s opinion No. 1966 of 27-2-48 wherein a similar question has been considered"

Ed/- E.P.B.
13-5

P.M.lad
13-5

U.R. to R.d. No. 4702 dt. 17-5-48.

S.C.
4 Copies 21-5

Office of the R.L.A.

Appeal to Govt, Bombay Tenancy Act 1939. Secs. 20 and 24 (1A) Setting aside order of Prant Officer.

It appears that Navnitlal Dhaneshwar of Jambusar is the owner of half of Survey No. 58 of Vavli and one Ashabhai Bakorbhai of Vavli is a permanent tenant of the said land. Navnitlal applied to the Tenancy Aval Karkun for eviction of Ashabhai Bakorbhai under section 24(1A) on the ground that Ashabhai had failed to pay rent and also had sub-let the land in contravention of section 5(2)(d). The Tenancy Aval Karkun awarded possession to the applicant holding firstly that no time for payment of arrears of rent should be given to the tenant under the proviso to section 20 on the ground that it was not retrospective and secondly there was sub-letting in contravention of clause (d) of section 5(2). His order confirmed in appeal by the Prant Officer and Ashabhai has now appealed to Government to set aside that order

2. Section 76 of the Bombay Tenancy Act provides that no provision contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract grant, decree or order of a court or otherwise howsoever. Permanent tenancy creates higher rights than those of a statutory tenant under the Bombay Tenancy Act, 1939, and these higher rights can in no way be overridden by the provisions of the Bombay Tenancy Act. A permanent tenant has a right in the land which right can be enjoyed even by sub-letting. Consequently, the provisions of clause (d) of section 5(2) cannot prevent the sub-letting of lands held on permanent tenancy. Section 20 applies to suits filed on permanent tenancy. filed either in the Civil Court or in the Mamlatdar's court for eviction. That section will, therefore, have no application to the present case since the Tenancy Aval Karkun cannot be considered a Mamlatdar's Court. If section 20 has no application, much less can the proviso thereto apply. Failure to

pay rent may give a right to the landlord either to recover the arrears of rent or to terminate the tenancy, If he desires to exercise the latter right n amely the termination of tenancy, he can do so by a notice and there-after can evict the tenant by due process of law. In the present case, it is not known whether the landlord has a right to terminate the tenancy on the ground of non-payment of r nt. Even if he had such right, he could not evict his tenant except through proper court. Consequently, the orders passed by the Tenancy Aval karkun and confirmed in appeal by the Tran t Officer are opposed to law. Government may, therefore, set them aside under section 28 of the Bombay Tenancy Act.

P.M.Lad
7-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4425 , D/- 7th May 1948.

S.c.
4 Copies 21-5

Office of the R.L.A.

Whether Mahalkari can terminate tenancy for non-payment of rent and grant possession

Bombay Tenancy Act, 1939.

Sec. 24(1-A) and Sec. 20.

It appears that in this case the landlord applied on 27th August 1947 to the Mahalkari for possession of the land on the ground that his tenant had failed to pay the rent for the years 1945-46 and 1946-47. Since the tenant failed to pay the rent before 30th October 1947 though promised, the Mahalkari passed an order giving possession of the land to the landlord. R.D. considers that the Mahalkari's order so far as it directs the termination of tenancy is correct and needs no interference as the tenant did not pay the rent even up to 8-11-1947 when the case was re-heard. But R.D. appears to be of the view that the Mahalkari's further order directing possession of the land being granted to the landlord is ultra-vires because he could not exercise the powers of a Civil Court or of the Mamlatdar's Court under section 20 and award possession and that the provisions of section 24(1A) imply that such power cannot be exercised by the Mamlatdar initially. The R.L.A. is requested to advise.

The first question was considered by the R.L.A. in his opinion No. 3037, dated 30th March 1948. As pointed out by the R.L.A. in that opinion, the Mahalkari had no power to order the termination of tenancy. Whether the landlord could validly terminate the tenancy was a matter for the Civil Court or the Mamlatdar's Court to decide before awarding possession. Consequently the Mamlatdar's order terminating the tenancy was without jurisdiction and Government may set it aside under section 28 of the Act.

On the second question as to whether the Mahalkari could award possession under section 24(1-A), it may be pointed out that that provision does not vest any jurisdiction in the Mamlatdar to decide the rights between the parties. It only imposes a restriction on the landlord to obtain possession of land held by a tenant except under an order of the Mamlatdar. The ordinary jurisdiction vested in the Civil Court or in the Mamlatdar's Court to

award possession t a landlord from a c-art on the ground of termination f of tenancy is in no way impaired by the provisions of section 24(1-A) . Consequently section 24(1-AO comes into play only after possession has been awarded by the Civil Court or by the Mamlatdar's Court on the ground of termination of tenancy. The order of the Mahalkari awarding possession to the landlord is, therefore, ultra vires and may be set aside by Government.

Sd/- P.M.Lad
12-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4610 dated 10th May 1948.

S.C.
4 Copies 21-5

Office of the R.L.A.

In this case the Godavari Sugar Factory took certain lands on lease (presumably from Government) for a period of 30 years in 1941. The Factory sub-leased the lands in 1946-47 on one-half the crop share. The sub-tenant applied to the Mamlatdar stating that he is liable to pay rent only of the third share under the Act and requested to fix the rent accordingly. The Mamlatdar dismissed the application on the ground that under section 25 the provisions of the Act do not apply to lands held on lease by the Factory.

2. The Commissioner, C.D., is of opinion that, as section 25 stands at present, its provisions are applicable to these lands and suggests that the section may be amended when a suitable opportunity occurs, as it does not appear that it was the intention of the Legislative to exempt such cases from the provisions of the Act.

3. Section 25 of the Bombay Tenancy Act, 1939 provides;

> "Nothing in this Act shall apply to lands --
>
> (1) held on lease from the Crown or a Co-operative society, or
>
> (2) held on lease for the benefit of an industrial or commercial undertaking."

The Godavari Sugar Factory undoubtedly is an industrial undertaking. The lands held on lease by the Factory must be deemed to be held for the benefit of such undertaking. By the word "benefit" we mean advantage, profit, gain, interest or use. These lands, though sub-let, would, therefore, be exempt from the provisions of the Bombay Tenancy Act, 1939. They would also be so exempt if they are taken on lease from the Crown.

4. It appears from the report of the Select Committee on L.A. Bill No. XXIV of 1938 that section 25 was inserted as a new clause to save from claims of protected ntx tenancy (i) Crown lands, such as forest lands, where individuals are engaged to cut xxxx grass, etc., and (ii) lands of sugar companies, etc., where lands are cultivated for a commercial or industrial purpose. With that history of the section, the question of making any amendment does not arise.

P.M.Led
Remembrancer of Legal Affair

U.R. to R.D. No. 4078 dated the 25th May 1948.

S.C.
4 Copies 21/5

Office of the R.L.A.

Protected Tenant
Bombay Tenancy Act 1939 :-
Sec. 3, Expln. II.
Sec. 4.

The view taken by the Commissioner, N.D. in para 2 of the endorsement at p. 20 ante is correct. Explanation II to section 3 of the Bombay Tenancy Act, 1939, cannot be resorted to for the purpose of interpreting section 4. The decision of the District Deputy Collector, Broach in appeal that the applicant cannot be considered a protected tenant to respect of S.No. 64 ~~in appeal~~ is correct.

P.M.lad.
21-6

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5817 D/- 22nd June 1948.

S. C.
4 Copies 21/5

Office of the R.L.A.

Fixing of reasonable reht while a suit is pending between landlord and tenant.

Bombay Tenancy Act, 1939.

In the circumstance there apears no legal objection to directing the Mamlatdar to proceed with fixing the reasonable rent; but action under section 32 C.P.C. as stated by R.D. for enforcing the attendance of the landlord would not be legal for under section 2 12(2) of the Bombay Tenancy Act, 1939 the landlord is entitled to a notice and cannot be exam summoned.

P.M.Lad.
20/6
Remembrancer of Legal Affairs.

U.R. to R.D' No. 5832 , dated the 22nd June 1948.

S.C. 4 Copies 21/5

Office of the R.L.A.

Bombay Tenancy Act, 1939

Section 22(2)(3)

The offence under section 22(3) of the Bombay Tenancy Act, 1939 will have to be inquired into and tried according to the previsions of Criminal Procedure Code 1898 (see section 5(2) Criminal Procedure Code). An offence can be taken cognizance of by a Magistrate under section 190(1) of Criminal Procedure Code (a) upon receiving a complaint of facts which constitute such offence, (b) upon a report in writing of such facts made by any police officer or (c) upon information received from any person other than a police officer or upon his own knowledge or suspicion, that such offence has been committed. It is therefore, clear that a District Magistrate or Sub-divisional Magistrate or any other Magistrate specially empowered in this behalf can take cognizance of the offence under section 22(3) of the Bombay Tenancy Act even suo motu upon his ownknowledge or suspicion that the offence has been committed. On the whole judicial opinion favours the view that a Magistrate has power under clause (c) to take cognizance of an offence upon information received by him in a different official capacity. The accused would no doubt be entitled to the safeguard contained in section 191 of the Criminal Procedure Code, 1948.

Sd/- P.M. Lad 9/7
Remembrancer of Legal Affs

U.R. to R.D. No. 6499 ,dated the 10th July 1948.

S.C.
4 Copies 21/5

Office of the R.L.A.

Recovery of possession for non-payment of rent.

Bombay Tenancy Act, 1939.

Secs. 20 and 24 (1A).

It appears that one Chotulal Kajodimal Marwadi filed tenancy application against Kalu Hari and Jhipu Hari under section 24 of the Bombay Tenancy Act for possession of land on various grounds, one of which was the non-payment of rent. The tenancy Aval Karkun, Dhulia, who heard the application awarded possession to the applicant onthe ground of non-payment of rent. An appeal against that order was preferred to the District Deputy Collector, Dhulia, who confirmed the order passed by the Tenancy Aval Karkun. Kalu Hari has now applied to Government for setting aside the order passed by the Mamlatdar Tenancy Aval Karkun. He has raised various contentions, one of which is that the Aval Karkun could not decide the question of rights between the parties and had no jurisdiction to award possession. The view taken by the Revenue Department office is that the award of possession granted to the applicant would not be lawful inasmuch as the benefit of 15 days for payment of rent provided in section 20 would in such an event be denied to the tenant. The Under Secy., R.D. is inclined to agree that the Tenancy Aval Karkun and District Deputy Collector's orders are not improper. The Remembrancer of Legal Affairs is requested to advise.

2. Section 20 of the Bombay Tenancy Act indirectly preserves the jurisdiction of a Civil Court and of the Mamlatdar's court to enter air claims for possession of lands on the ground of termination of tenancy for non-payment of rent. The Act does not expressly oust the jurisdiction of ordinary Civil Courts and of the Mamlatdar's courts. Consequently, suits for possession on the ground of non-payment of rent would have to be filed either in the civil courts in the Mamlatdars Courts. No doubt, section 24(1A) imposes a restrictionon the landlord not to obtain possession except under an order of the Mamlatdar, and sub-sections (2) to (5) prescribe the procedure and the effect of such orders. However, these provisions have to be reconciled with section 20 and the only way to reconcile these provisions would be to

S.C. 21/5

astru section 20 as preserving the jurisdiction of the Civil Courts and of the Mamlatdar's courts, and section 24(1A) as requiring a landlord to apply to the Mamlatdar for possession even after he has obtained a decree either in the civil court or in the Mamlatdar's court. Consequently, the proceedings taken in the present case, under section 24(1A) before the Tenancy Aval karkun by an application without first obtaining a decree either of the Civil Court or of the Mamlatdar's court, would be without jurisdiction. The view taken by R.D. office is correct and Government may not set aside the orders passed by the Tenancy Aval Karkun and the District Deputy Collector and direct the applicant first to approach the Civil Court or the Mamlatdar's court for obtaining a decree for possession and thereafter to apply under section 24(1A) to the Mamlatdar of possession.

Sd/- P.M.Lad 12/5
Remembrancer of Legal Affairs.

U.R. to R.D. , NO. 4609 , dated the 13th May 1948.

S.C.
4 C. 21/5

Office of the R.L.A.

Bombay Tenancy Act, 1939.
Section 23:
Whether a stranger can lodge a Complaint.

Section.23(1)(a) of the Bombay Tenancy Act, 1939 impliedly prohibits a landlord from executing a lease for a period less than 10 years, and a landlord who executes a lease of a period less than 10 years would be deemed to be a confirmed contravened that provision and become liable to punishment under sub-section (3).

The offence under section 23(3) shall have to be inquired into and tried according to the provisions of the Criminal Procedure Code (see section 5(2) Criminal Procedure Code). The definition of "complaint" in section 4(h), Criminal Procedure Code implies that every member of the public has a right to set the law in motion by a complaint whether he is himself a witness of facts or not (21 Bom. 536). Certain exceptions are however created by Statute for example sections 195 and 196 Criminal Procedure Code, offences under the stamp law, lotteries etc. The complaint need not necessarily be by the aggrieved person except in these cases restricted by the Code(xx 18 All. 865 following 13 Bom. 600). Since the Bombay Tenancy Act prescribes no procedure of launching prosecutions for the contravention of the provisions thereof and the Criminal Procedure Code does not require a complaint from an aggrieved party in such cases there would be no legal objection to any party other than an aggrieved party to file a complaint under section 23(3) of the Bombay Tenancy Act.

P.B.Lad. 25/6
Remembrancer of Legal Affairs.

U.R. to R.D., No. 5959 ,dated the 25th June 1948.

S.C.
4 Copies 21/5

Office of the R.L.A.

Bombay Tenancy Act, 1939, Sections 14 and 15.

Whether the Patdi Darbar can irrigation charges in addition to rent.

The Patdi Darbar seeks to recover one-third crop share in respect of paddy cultivated by its tenants on the ground that such paddy has been grown with the help of water supplied by the Darbar from a bundh constructed and maintained entirely at its own cost. The commissioner, N.D., observes :

> "The Patdi Darbar is not entitled to more than one fourth share in the paddy crop as it has been raised in irrigated lands (vide section 15 of entitled in the Bombay Tenancy Act). The Darbar is, however, entitled to levy a charge for the supply of water from the bund maintained by the Darbar.

The R.L.A. is requested to state whether the view taken by the Commissioner, N.D. is correct and, if not, whether the levy of irrigation charge would contravene the provisions of section 14 of the Bombay Tenancy Act.

2. Section 14(1) of the Act provides that, notwithstanding any agreement, usage or law, it shall not be lawful for any landlord to levy any cess, rate, vero, huk, tax or service of any description or denomination whatsoever, from any tenant in respect of any land held by him as a tenant other than the rent lawfully due in respect of such land. In exercise of the powers conferred by sub-section (1) of section 15, Government has fixed the maxium rate of rent payable by tenants of one-fourth of the crop or its value in the case of irrigated land or the rate of rent agreed upon between the tenant and his landlord, whichever is less. "Irrigated land" has been interpreted to mean lands which are artificially watered irrespective of their survey classification (see R.L.A.'s No. 2919, dated the 26th March 1947). It would follow therefore, that the limit of one-fourth prescribed by the notification would apply to these lands although the watering facilities

therefor may have been provided by the Darbar. The terms of section 14 are very wide indeed and would cover the recovery of any charges for the supply of water. A cess or rate in respect of any land would include a cess or rate for water supplied to that land. The intention of the section is to prohibit recovery of any cess or rate in addition to rent. When a landlord leases land which enjoys facilities for irrigation, whether within the land or attached to it, he leases the whole property, including such facilities. The lease is a transfer of the right to enjoy that property and the money, share or service, etc., which is rendered periodically by the lessee would be rent. Since the limit of the rent is fixed, the landlord cannot be allowed to circumvent that limit by the device of adding a separate cess for water to the rent. In my opinion, therefore, the Patdi Darbar would not be entitled to recover anything more than the rent within the limits prescribed by the notification.

P.M .Lad
Remembrancer of Legal Affairs.

U.R. to R.D., No. 6350 dt, the 7th July 1948,

S.C.
4 Copies 21/5

Office of the R.L.A.

Bombay Tenancy Act, 1939 Sec. 24(1-A) Effect of Civil Court awarding possession.

In view of section 24(1-A) of the Bombay Tenancy Act, 1939, it was open to the tenant to resist eviction through court notwithstanding the decree of the Civil Court. Since however he has been already evicted, his only remedy would be to approach the Civil Court for restoration on the ground that his eviction was unlawful.

P.M.Lad.
9/7
Remembrancer of Legal Affairs.

U.R. to R.D., No. 6465 ,dated the 9th July 1948.

SC.
4 Copies 21/5

The facts are stated in the letter from the Collector of Broach, No. R.E.V. 0/26 dated 15-3-1948.

Pp. 11-12 of Correspondance

It appears that in the year 1946, Bai Vidyaben had applied to the Mamlatdar's Court for possession of S.No. 2049 of Kanharwadpati but as Mr. Chhotubhai (tenant) agreed to restore possession of the land by 31-3-47 the suit was compromised. As, however, Chhotubhai (tenant) did not hand over possession of the said land on the date agreed upon (31-3-47), on 5-5-47 Bai Vidyabai made an application in the Court of the Mamlatdar, Nadiad, stating inter alia that Chhotabhai Arjubhai had used her land for stacking fuel, that is for a purpose other than agricultural and that as she required the land for cultivating it personally, the possession of the land may be restored to her.

P. 23 of File below

P. 25 -do-

PP. 1-2 of File below.

For the reason stated in his order dated 30-7-1947, the Tenancy Aval Karkun dismissed the application. Against the said adverse decision of the Tenancy Aval Karkun, Bai Vidyaben preferred an appeal to the D.D.C. Nadiad Prant, who held that the landlady was entitled to terminate the tenancy under section 5(2)(c) of the Bombay Tenancy Act and directed that possession should be handed over to her by Chhotabhai immediately if there was no standing crop or immediately after harvesting the crops if crops was standing. Against the said order of the D.D.C. Mr. Chhotabhai has presented an appeal to Government.

PP. 75-79, slip H -do-

In the R.D. Office note dated 9-4-48 it is remarked :-

p. 13 ante.

> "The T.A.K. or a Mamlatdar or a P.O. is not a Court under the B.T.Act. These officers exercise power of ordering possession of any land to a landlord under section 24(1A). The provisions of that section are negative and do not vest in these officers a positive authority to decide possessory suits. In this view both the T.A.K's and P.O.'s orders are ultra vires."

The R.L.A. is requested to advise whether the R.D. Office view is correct.

S.C. 21/5

Office of the R.L.A.

try on Record of ghts as protected nants when the nants when the aim to be rmanent tenants.

---

mbay Tenancy Act, 39.

ction 3A and ction 26.

Bombay Land Revenue Code 1879. Sections 83 and 135D.

It appears that Darbarshree Ahadal State holds an alienated share of the village of Sarali under the Kapadvanj Taluka of Kaira district, the tenants of which object to their names being entered as "Protected tenants" under section 3 of the Bombay Tenancy Act on the plea that they are Khata-tenants enjoying rights from times immemorial, e. inheritance, and alienation. They have produced before the Divisional Tenancy Officer, N.D. Ahmedabad, printed copy of Kabulayat which describes all their rights and liabilities and tending to show that their possession and duration of the term are co-extensive with ~~that~~ those of the landlord who has no interest in the land other than receiving land revenue or assessment. The Commissioner, N.D. suggested as that the tenants' rights should be recorded as protected tenants under section 3A of the Tenancy Act observing that there would be no objection to the suggestion in view of the provisions of section 26 of the Bombay Tenancy Act preserving the higher rights, if any, of the tenants, and if the tenants go to a Court to establish their rights as permanent tenants, the burden of proof would be thrown on them and if the Thakor goes to Court denying their rights as protected tenants, the burden of proof was would lie on him. The Commissioner considers that the tenant should be advised not to protest against their rights being recorded as protected tenants and to go to Court to get their superior rights established, if they

so desire, The question raised for the consideration of the R.L.A. is whether the view taken by the Commissioner, N.D. is correct.

It is true that section 26 of the Bombay Tenancy Act preserves the higher rights, if any, of the tenants; but the main question for consideration is whether entering their names as protected tenants, when there appears to be prima facie documentary evidence to prove their higher rights as permanent rights would prejudice their rights. Under section 3A the rights of a protected tenant are to be recorded in the Record of Rights. Section 135 J of the land Revenue Code provides that an entry in the Record of Rights and a certified entry in the Register of Mutations shall be presumed to be true until the contray is proved or a new entry is lawfully substituted therefor. Consequently if these tenants are entered as protected tenants in the Record of Rights, the entry so made shall be presumed to be true and it wouldbe for these tenants to go to Court to establish their higher rights. Under section 83 of the land Revenue Code, it would be permissible to decide whether these tenants are permanent tenants. When that provision provides a machinery for deciding their rights and when it appears that there is documentary evidence in support of their such rights, it would not be proper to record them as mere protected tenants and to drive them to a civil court to prove that they are permanent tenant . Consequently the Mamlatdar should first be asked to determine under section 135 D(7) of the land Revenue Code whether these tenants are permanent tenants as defined in section 83 of the Land Revenue

Code. If they are held to be permanent tenants, entries describing them as such and also as protected tenants may be made. If on the other hand, their claim to permanent tenancy is rejected they may be entered merely as protected tenants.

P.M.Bad
Remembrancer of Legal Affairs.

U.R. to R.D., No. 6971 ,dated the 26th July 1948.

S.d.
4 Copies 21/5-

The Bombay Tenancy Act, 1939.

Section 15(1).

Fixation of maximum rent.

Section 15(1) of the Bombay Tenancy Act, 1939 read with the previso thereto appears to contemplate the fixation in an area of the maximum rent in terms of the produce of the lands in that area. Consequently it would not be legally feasible to fix the maximum rent in the present case at the original rent of Rs. 3 per Bigha under section 15(1) as it stands at present.

P.M.Lad
Remembrancer of Legal Affairs.

U.R. to R.D., No. 7118 , dated the 29th July 1948.

C.
4 Copies 22/5

Office of the R.L.A.

The general principle of law is that when the principal tenure ceases to exist, all under tenures must come to an end. Under tenures cannot survive the extinguishment of the principal tenure. This principle has been applied in the case of alienated lands such as Saranjams (Secretary of State v. Girjabai L.R.54 I.A.359). The same principle will apply to watan lands. No question of overriding the provisions of the Bombay Hereditary Offices Act, 1874, by the provisions of the Bombay Tenancy Act, 1939, arises or need be considered.

T. R. Dhurandar
Additional Secretary to Government.

U.R. to R.D., No. 7163 ,dated the 30th July 1948.

S.C.
4 Copies 22/5

L.D.R.I. No. 7175 Dt. 8.6.48.

A.A.S.

The U.S.R.D. states that "the applicant being a member of the Joint Hindu family automatically steps into the shoes of his father, and since he has satisfied the provisions of sec. 4(2), is entitled to the possession of the case lands. The A.K.'s order seems to have been based on this ground". The papers are referred to the R.L.A. for his advice whether the view expressed in paras 4 and 5 of the R.D. Office note dt. 2.6.48 is correct.

p. 23 ante.

Sd/ 25-7

Reply may be :-

On the assumption that the lease to Motiji was in fact a lease to him as Manager of the joint Hindu family the view taken by ~~Nos. R.D.~~ U.S., R.D. in his note at p.24 ante is correct

Sd/-P.M. 2/8 Ld

Sd/-RTK. 2/8

U. re Tl R.D. No. 7313 dt. 4-8-48.

S.C. 6 Copies

22/5

Office of the R.L.A.

Irrigated Land.

Bombay Tenancy Act, 1939, Sec. 15(1).

To determine whether a land is irrigated or not under section 15(1) of the Bombay Tenancy Act what is essential is irrigation by artificial means. Bagayat land is in essence irrigated land wherein crops, of some kind or other are grown throughout the ~~yare~~ year by means of well water, although during the monsoon well-watering may not be necessary, the well is used always as a stand-by. Consequently Bagayat lands are irrigated lands. Whether other lands are irrigated lands would be a question of fact to be decided with reference to the crop being mainly and not casually irrigated by artificial means.

D.R. Dhurandar.
10/8
Additional Secretary to Government.

U.R. to R.D. No. , 7562 ,dated the 11th August 1948.

S.C.
4copies 22/5

Bombay Tenancy Act,
Working of section 12 and 14 A of,

GOVERNMENT OF BOMBAY.
REVENUE DEPARTMENT.
CIRCULAR NO. 9618/45.
Bombay Castle, 4th September 1948.

CIRCULAR OF GOVERNMENT.

It has come to the notice of Government that assistance suits filed by landlords for recovery of arrears of rent are disposed of by the officers concerned even if applications for fixation of reasonable rent under section 12 or 14-A of the Bombay Tenancy Act covering the years for which arrears are due, are pending decision before Mamlatdars or Civil Judges. This position creates in effect practical difficulties especially in cases in which the arrears amount decreed in assistance suit varies from the amount which becomes payable in fixation of reasonable rent. In order to obviate such difficulties Government considers that in cases in which an application for fixation of reasonable rent under section 12 or 14 A of the Bombay Tenancy Act is pending, the hearing of an assistance suit for recovery of arrears of rent for the years covered by the application for fixation of rent bekept pending decision on the application-fro suo fixation.

By order of the Governor of Bombay.

B.A. Talpade.
Additional Under Secretary to Governmen

To
The Commissioners of Divisions,
All Collectors,
All Prant Officers
All Divisional Tenancy Officers, Northern, Central and Southern Divisions,
All Mamlatdars and Mahalkaris,
The Legal Department.

No. of 1948.

Copy forwarded for information and guidance to :

S.C. 2345

Office of the R.L.A.

Termination of tenancy for sub-letting allowed by the lease - order passed by the D.D.C in appeal in evicting tenants may be set aside by Government as being without jurisdiction.

...

Bombay Tenancy Act, 1939. Section 5(2), 23(1A), 28.

The Bombay Tenancy Act, 1939, was brought into force in the district of Broach with effect from 11th April 1946. It appears that the landlords Mr. F.J. Karaka and three others leased out their lands at Zadeshwar taluka Broach for the year 1946-47 to Messrs. Haribhai Ramdas and others by a rent-note dated 2-3-1946 whereunder sub-lease was permissible. The lessees in their turn sub-let these lands to 14 sub-tenants under separate rent-notes dated 10-6-1946. The landlords made an application No. 3236 of 1947 to the Tenancy Aval Karkun for terminating the tenancy on the ground that the leased lands were sub-let and sub-divided. The Tenancy Aval Karkun, who heard the application, held that there was no valid termination of tenancy as the sub-letting and sub-division of the leased lands had taken place before the coming into force of the Bombay Tenancy Act in the district. Against that order the land lords filed an appeal to the District Deputy Collector who held that the sub-tenants had no locus standi and ordered them to vacate immediately after the crops were harvested.. The sub-tenants have now applied to Government in revision under section 28 of the Bombay Tenancy Act for setting aside the order of the District Deputy Collector. The question raised for the consideration of the Remembrancer of Legal Affairs is whether the landlords are entitled to eviction under the Bombay Tenancy Act.

2. The Bombay Tenancy Act, 1939, was brought into force in Broach district with effect from 11-4-1946; and the sub-tenancy in thepresent case

being..

being created thereafter the tenant in this case is not a protected tenant within the meaning of the Bombay Tenancy Act, 1939. Section 5 of the said Act has been applied to all tenants by virtue of section 3A. Section 26 provides that no provisions contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever. Since the right to sub-let the lands has in the present case been created by the lease itself and has been exercised before section 5 was applied, sub-section (2) of the said section entitling the landlords to terminate the lease will have no application. Consequently sub-tenancy cannot be considered to be unauthorised entitling the landlords to terminate the lease. The application filed by the landlords for evicting the sub-tenants on the ground of termination of lease woul not, therefore, be tenable.

3. Section 5(2) of the Bombay Tenancy Act only gives the right to the landlord to terminate the lease on the ground of sub-tenancy. After such termination the landlord cannot take possession of the demised land save by the process of law. Under section 24(1A) no landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar ~~xx~~ and for obtaining such order he shall make an application in the prescribed form. It appears that the landlords in making the application for eviction to the Tenancy Aval Karkun rely on this provision. But as pointed out by the R.L.A. in his opinion No. 4609 dated 13th May 1948, "this provision merely imposes a restriction on the landlord to obtain possession of the land held by a tenant except under an order of the Mamlatdar and the ordinary jurisdiction vested in the Civil Court or in the Mamlatdar's court to award possession to a landlord from a tenant being in no way impaired by the

 provisions

provision of section 24(1A), the la ter provision would come into play only after possession has been awarded by the Civil Court or by the Mamlatdar's Court. Consequently the proceedings taken in the present case under section 24(1A) before the Tenancy Aval Karkun for possession without obtaining a decree either of the Civil Court or of the Mamlatdar's Court would be without jurisdiction. The order passed by the District Deputy Collecter evicting the sub-tenants is therefore without jurisdiction.

In the circumstance t he order passed by the District Deputy Collecter may be set aside by Government.

Sd/- P.M. Lad
15/7
Remembrancer of Legal Affairs.

U.R. to R.D', No. 6639 dated the 15th July 1948.

S.C.
4 C. 22/5

12/7

(26-A
13-7-48.

Mr. Viharilal T. Gambhirwale ✱ Advocate, on behalf of his clients Jagannlal Bhagwan and others of Jhadeshwar has sent detailed letter in connection with the application in revision to the Govt. of Bombay (Revenue Dept) under Sec. 28 of the Bombay Tenancy Act ~~Ac~~ Very recently he had an interview with H.M. and as per instructions he has sent a detailed letter for H.M.'s information and necessary action.

Sd.
12/7

Will R.L.A. state whether his opinion has been sent to the R.D. ? I would like to x see the papers if they are not returned to R.D

13/7

S.C.
4 Copies 22/7

VIHARILAL A. GALBHIRWALA
B.A.LL.B.
Advocate

Amar (Gautam Niwas)
Charni Road, Bombay 4.

To,

DINKORRAI N.DESAI Esq., M.A.LL.B.
Minister of law & Civil Supplies,
Government of Bombay, Secretariat
B O M B A Y.

Honoured Sir,

May I bring to your kind notice the following few facts for your immediate attention ?

On behalf of my clients Jaganlal Bhagwan and others of Jhadeshwar, in the Broach District I presented on 25-12-1947 an application in revision to the Government of Bombay (Revenue Department) under S. 28 of The Bombay Tenancy Act praying for setting aside the order of the learned D.D.C.Broach, who had ordered my clients to hand over possession of very valuable and fertile lands to the owners who were appellants before the D.D.C. Broach. In that application I prayed for stay of execution of the said order of the D.D.C. pending the hearing of the revision application and its final disposal inasmuch in case the application was not likely to be decided before the end of the season for the year 1947. It would be worthwhile to note that the order of the D.D.C. was that the applicants should hand over possession after the crops for the current season were reaped. No stay order was issue nor was the application finally decided till the month of March 1948. In the meanwhile I used to inquire in the Revenue Department as to what has happened in the matter but every time the reply was that it was not decided. Then somewhere in the month of April'48 when I went again to inquire, I was given to understand that the mater was referred to the R.L.A. and the matter will be decided soon. Thereafter some time the crops were completely reaped in the lands in dispute and in the month of May 1948. when I went to Broach, which is my native place also, my clients saw me and informed me that the owners of the lands who are opponents in the revision application were pressing for possession . I consequently sent a tele-telegram to The Secretary, Govt. of Bombay, Revenue Dept. on 29th of May 1948 intimating that the opponents were pressing for actual possession of the lands in dispute and that therefore immediate stay order be issued. No reply was received. Thereafter my clients directly sent two telegrams in the same terms but nothing was heard.

That thereafter I came down to Bombay on or about the 4th of June as the Courts were to re-open after summer vacation and inquired in the Revenue Department as to what had happened to this matter and I was told that the papers were with the R.L.A. and that all the telegrams received by them were duly forwarded to the RLA. As my clients were pressing me. I at last sought an interview with the Hon'ble Minister concerned on 22-6-48 by a letter in writing but unfortunately I have not as yet received any opportunity to explain the whole position to the Hon'ble Minister concerned. The result is that the matter is still pending with great detriment to the interests of my clients.

Ordinarily I would not have troubled you but my clients and myself being from Broach from which good place your goodself hails, feel that you would look into the matter and see that the matter is expediated. The lands are very age and these fertile and valuable lands remain uncul-

very valuable and fertile . The cultivation has commenced - long ago and these fertile and valuable lands remain uncul - tivated because of the unhappy position created on acco- unt of indecisive situation as a result of no final decisi- on by the Government or the non-issue of the stay order up- to this date, If the lands remain uncultivat ed it would cause great loss and injury to my clients. If a stay order was iss- ued, which the Department would have very well done long ago the lands would have been cultivated with no loss to either party. One really fails to understand wuch a long delay in issuing the stay order of deciding the matter finally so -- that both parties may not suffer.

In view of all what has been stated abeve, my clients and myself feel sure that you would look into the matter in the interest of justice and s e where the hitch lies.

With best regards,

Yours truly,
T.
Viharilal Gambhirwala
Advocate.

S.C.
4 C. 22/5

submitted.

One Mr. V.N. Deshpande made an application on 7-11-1948, under section 3A of the Bombay Tenancy Act, 1939 for a declaration that his tenants in respect of S.Nos. 11 and 25/2 of Sambargi, taluka Athni, were not protected tenants. The application was received by the Mamlatdar on 8-11-47 i/e/ a day after the prescribed period of one year. He, therefore, held that it was time-barred and rejected it.

The petitioner contends that as his application is dated 7-11-47, it is within time as it was made on that date. According to him date of receipt by the Mamlatdar is immaterial.

The Commissioner S.D. in his letter dated the 7th June 1948 at p.21 ante ~~xxtxx inxkix~~ states in this connection :

".....It appears that the word "made" in sec. 3A implies "receipt" and an application can be regarded as made to the Mamlatdar within period only if it is received by him with n that period".

The words "within the said period" read with the words and figures "on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946" connote that the application made by the landlord for a declaration that the tenant is not a protected tenant should reach the Mamlatdar before the expiry of one year, failing which the tenant would be deemed to be a protected tenant. ~~view expressed by the~~ Mr. C.D. ~~appears to be~~ is correct.

R.L.A-Idf-P1M-L-2017

U.R. to R.D. No. 8060 , dt. 24-8-48. RTK. S.C

147/148/149.

L.D.R.I.No. 9670 dt. 2-8-48.

A.A.S.

The question is whether applications made under the different sections of the Bombay Tenancy Act, 1939, which are dismissed on account of non-attendance of the parties after the due service of notices, can be restored to the file and reheard if the parties or either of them apply for it.

Sd. C.P.B.
23-8

A.I.R. May be :-

seen and returned

Either the appellate authority or the revisional authority can order the restoration of applications dismissed by the Mamlatdar under the Bom. Tenancy Act 1939, for default of ~~Parties~~ parties.

Sd/-A.K. 2/9

R.L.A. Sd/- P.M.Lad 2/9

U.R. to R.D. No. 8545 dt. 9-9-48.

S.C. 4 C,
22/5

R.I.No. 6275 dated 13.5.1948.

Submitted ,

2. Mr. K.D. Marwari made an application in the Mamlatdar's Court at Yeola for possession of C.No. 10 of Jalgaon Deur, taluka Yeola, district Nasik, from .R. Shinde who failed to pay rent for 1946-47. The Mamlatdar held that the tenant committed a breach of sec. 5(2)(a) of the Bombay Tenancy Act and directed that possession of the land should be restored to the landlord under sec. 24(1A) on payment of the value of the standing crops. In the appeal, the Asstt. Collecter Nipha upheld the Mamlatdar's order. That the tenant has now approached Govt. in revision . R.D. is of the view that the Mamlatdar must have admitted the application under the Mamlatdars Courts Act and the Asstt. Collector must have entertained the appeal under section 23 of that Act and, therefore, Govt. has no revisionary powers in such cases and it is High Court only which can exercise the revisionary powers. R.D propose to inform the applicant tenant that Govt. cannot interfere in the matter. The R.L.A. is requested to advise in the matter.

P.S Nadkarni 27/7

A.A.S
Seen and returned

The view expressed in para 2 of the R.D. his office note dt. of 8-5-48 is correct (see R.L.A's opinion No 3084 of 30-8-48

Rd
30-7
RTK. 31-7

R.L.A. P.M.Lad
31-7

U.R. to R.D. No. 7272 dt. 2-8-48.

D.O. 4 Copies
22/5